

**INSURANCE REVISIONS**

2016 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies provisions related to insurance.

**Highlighted Provisions:**

This bill:

- ▶ corrects citations;
- ▶ amends definitions;
- ▶ modifies language related to comparison tables;
- ▶ addresses compliance with PPACA and administrative rules;
- ▶ addresses application of vehicle protection product warranties under the statute;
- ▶ modifies the Risk Retention Groups Act, including:
  - amending definitions;
  - imposing requirements on risk retention groups chartered in this state;
  - providing that countersignatures are not required;
  - addressing purchasing groups;
  - addressing the role of producers; and
  - granting rulemaking authority;
- ▶ addresses credit allowed a domestic ceding insurer against reserves for reinsurance;
- ▶ lists in what form security may be in for purposes of asset or reduction from liability for reinsurance ceded by a domestic insurer to another assuming insurer;
- ▶ provides when the liability of insurer under a motor vehicle liability possibility becomes absolute;
- ▶ modifies reference to husband and wife;
- ▶ addresses insurance for alcohol and drug dependency treatment;
- ▶ provides that violation of an order by a regulatory agency in any jurisdiction may be grounds for discipline;
- ▶ addresses continuing education requirements;
- ▶ provides that a person's variable contracts line of authority is canceled when that

- 33 person's securities license is no longer active;
- 34 ▶ addresses insurer's liability if the insured pays a premium to a licensee or group
- 35 policyholder;
- 36 ▶ modifies citations related to allowance of contingent and unliquidated claims;
- 37 ▶ modifies disclosure requirements when a policy or contract is not covered by a
- 38 guarantee association;
- 39 ▶ amends training requirements for insurance producers related to the Health
- 40 Insurance Exchange;
- 41 ▶ requires insurers to have antifraud plans;
- 42 ▶ modifies minimum financial requirements for bail bond surety company license;
- 43 ▶ amends definitions related to captive insurers;
- 44 ▶ addresses the application of the Risk Retention Groups Act to captive insurers;
- 45 ▶ addresses capital requirements for captive insurers;
- 46 ▶ modifies provisions related to reinsurance and captive insurance companies;
- 47 ▶ amends reporting requirements for captive insurance companies;
- 48 ▶ clarifies timing of examinations of captive insurance companies;
- 49 ▶ addresses assessments related to title insurance;
- 50 ▶ modifies provisions related to the Title Insurance Recovery, Education, and
- 51 Research Fund Act;
- 52 ▶ modifies the repeal date for a specified section;
- 53 ▶ repeals provisions related to employee welfare funds and plans;
- 54 ▶ repeals provisions related to credit allowed a foreign ceding insurer; and
- 55 ▶ makes technical and conforming amendments.

56 **Money Appropriated in this Bill:**

57 None

58 **Other Special Clauses:**

59 None

60 **Utah Code Sections Affected:**

61 AMENDS:

62 **13-51-108**, as enacted by Laws of Utah 2015, Chapter 244 and last amended by

63 Coordination Clause, Laws of Utah 2015, Chapter 244

- 64           **31A-1-301**, as last amended by Laws of Utah 2015, Chapters 244 and 330
- 65           **31A-2-208.5**, as enacted by Laws of Utah 1990, Chapter 129
- 66           **31A-2-212**, as last amended by Laws of Utah 2015, Chapter 283
- 67           **31A-2-309**, as last amended by Laws of Utah 2008, Chapter 257
- 68           **31A-6a-101**, as last amended by Laws of Utah 2015, Chapter 244
- 69           **31A-6a-104**, as last amended by Laws of Utah 2015, Chapter 244
- 70           **31A-15-202**, as last amended by Laws of Utah 2010, Chapter 324
- 71           **31A-15-203**, as last amended by Laws of Utah 2011, Chapter 297
- 72           **31A-15-204**, as last amended by Laws of Utah 2003, Chapter 298
- 73           **31A-15-208**, as last amended by Laws of Utah 2010, Chapter 10
- 74           **31A-15-209**, as enacted by Laws of Utah 1992, Chapter 258
- 75           **31A-15-212**, as last amended by Laws of Utah 2003, Chapter 298
- 76           **31A-17-404**, as last amended by Laws of Utah 2008, Chapter 257
- 77           **31A-17-404.1**, as enacted by Laws of Utah 2008, Chapter 257
- 78           **31A-22-202**, as enacted by Laws of Utah 1985, Chapter 242
- 79           **31A-22-603**, as last amended by Laws of Utah 2001, Chapter 116
- 80           **31A-22-715**, as last amended by Laws of Utah 2001, Chapter 116
- 81           **31A-22-1201**, as last amended by Laws of Utah 2008, Chapter 257
- 82           **31A-23a-111**, as last amended by Laws of Utah 2012, Chapter 253
- 83           **31A-23a-202**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 84           **31A-23a-206**, as last amended by Laws of Utah 2012, Chapter 253
- 85           **31A-23a-410**, as last amended by Laws of Utah 2009, Chapter 349
- 86           **31A-23b-401**, as enacted by Laws of Utah 2013, Chapter 341
- 87           **31A-25-208**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 88           **31A-26-213**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 89           **31A-27a-605**, as enacted by Laws of Utah 2007, Chapter 309
- 90           **31A-28-119**, as last amended by Laws of Utah 2010, Chapter 292
- 91           **31A-30-116**, as last amended by Laws of Utah 2015, Chapter 283
- 92           **31A-30-209**, as last amended by Laws of Utah 2014, Chapters 290 and 300
- 93           **31A-35-404**, as last amended by Laws of Utah 2000, Chapter 259

94           **31A-37-102**, as last amended by Laws of Utah 2015, Chapter 244  
 95           **31A-37-103**, as last amended by Laws of Utah 2011, Chapter 284  
 96           **31A-37-204**, as last amended by Laws of Utah 2015, Chapter 244  
 97           **31A-37-303**, as last amended by Laws of Utah 2015, Chapter 244  
 98           **31A-37-501**, as last amended by Laws of Utah 2015, Chapter 244  
 99           **31A-37-502**, as last amended by Laws of Utah 2015, Chapter 244  
 100          **31A-40-208**, as last amended by Laws of Utah 2012, Chapter 169  
 101          **31A-41-202**, as last amended by Laws of Utah 2015, Chapter 330  
 102          **31A-41-301**, as last amended by Laws of Utah 2012, Chapter 253  
 103          **31A-41-303**, as enacted by Laws of Utah 2008, Chapter 220  
 104          **63I-2-231**, as last amended by Laws of Utah 2015, Chapter 244

105 ENACTS:

106           **31A-15-206.5**, Utah Code Annotated 1953  
 107           **31A-15-213.5**, Utah Code Annotated 1953  
 108           **31A-31-112**, Utah Code Annotated 1953

109 REPEALS AND REENACTS:

110           **31A-41-302**, as enacted by Laws of Utah 2008, Chapter 220

111 REPEALS:

112           **31A-13-101**, as last amended by Laws of Utah 1986, Chapter 204  
 113           **31A-13-102**, as enacted by Laws of Utah 1985, Chapter 242  
 114           **31A-13-103**, as last amended by Laws of Utah 1986, Chapter 204  
 115           **31A-13-104**, as enacted by Laws of Utah 1985, Chapter 242  
 116           **31A-13-105**, as enacted by Laws of Utah 1985, Chapter 242  
 117           **31A-13-106**, as enacted by Laws of Utah 1985, Chapter 242  
 118           **31A-13-107**, as last amended by Laws of Utah 2007, Chapter 309  
 119           **31A-13-108**, as enacted by Laws of Utah 1985, Chapter 242  
 120           **31A-13-109**, as last amended by Laws of Utah 1986, Chapter 204  
 121           **31A-17-404.2**, as enacted by Laws of Utah 2008, Chapter 257

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123 *Be it enacted by the Legislature of the state of Utah:*

124           Section 1. Section **13-51-108** is amended to read:

125           **13-51-108. Insurance.**

126           (1) A transportation network company or a transportation network driver shall maintain  
127 insurance that covers, on a primary basis, a transportation network driver's use of a vehicle  
128 during a prearranged ride and that includes:

129           (a) an acknowledgment that the transportation network driver is using the vehicle in  
130 connection with a transportation network company during a prearranged ride or that the  
131 transportation network driver is otherwise using the vehicle for a commercial purpose;

132           (b) liability coverage for a minimum amount of \$1,000,000 per occurrence;

133           (c) personal injury protection to the extent required under Sections 31A-22-306  
134 through 31A-22-309;

135           (d) uninsured motorist coverage where required by Section 31A-22-305; and

136           (e) underinsured motorist coverage where required by Section 31A-22-305.3.

137           (2) A transportation network company or a transportation network driver shall maintain  
138 insurance that covers, on a primary basis, a transportation network driver's use of a vehicle  
139 during a waiting period and that includes:

140           (a) an acknowledgment that the transportation network driver is using the vehicle in  
141 connection with a transportation network company during a waiting period or that the  
142 transportation network driver is otherwise using the vehicle for a commercial purpose;

143           (b) liability coverage in a minimum amount, per occurrence, of:

144           (i) \$50,000 to any one individual;

145           (ii) \$100,000 to all individuals; and

146           (iii) \$30,000 for property damage;

147           (c) personal injury protection to the extent required under Sections 31A-22-306  
148 through 31A-22-309;

149           (d) uninsured motorist coverage where required by Section 31A-22-305; and

150           (e) underinsured motorist coverage where required by Section 31A-22-305.3.

151           (3) A transportation network company or a transportation network driver shall maintain  
152 comprehensive and collision insurance that covers, on a primary or contingent basis, a  
153 transportation network driver's use of a vehicle while providing transportation network  
154 services, and that includes:

155           (a) an acknowledgment that the transportation network driver is using the vehicle in

156 connection with a transportation network company during a prearranged ride or waiting period,  
157 or that the transportation network driver is otherwise using the vehicle for a commercial  
158 purpose; and

159 (b) coverage limits that are at least equal to such coverage limits, if any, for the  
160 personal automobile insurance maintained by the vehicle's owner and reported to the  
161 transportation network company.

162 (4) A transportation network company and a transportation network driver may satisfy  
163 the requirements of Subsections (1), (2), and (3) by:

164 (a) the transportation network driver purchasing coverage that complies with  
165 Subsections (1), (2), and (3);

166 (b) the transportation network company purchasing, on the transportation network  
167 driver's behalf, coverage that complies with Subsections (1), (2), and (3); or

168 (c) a combination of Subsections (4)(a) and (b).

169 (5) An insurer may offer to a transportation network driver a personal automobile  
170 liability insurance policy, or an amendment or endorsement to a personal automobile liability  
171 policy, that:

172 (a) covers a private passenger motor vehicle while used to provide transportation  
173 network services; and

174 (b) satisfies the coverage requirements described in Subsection (1), (2), or (3).

175 (6) Nothing in this section requires a personal automobile insurance policy to provide  
176 coverage while a driver is providing transportation network services.

177 (7) If a transportation network company does not purchase a policy that complies with  
178 Subsections (1), (2), and (3) on behalf of a transportation network driver, the transportation  
179 network company shall verify that the driver has purchased a policy that complies with  
180 Subsections (1), (2), and (3).

181 (8) An insurance policy that a transportation network company or a transportation  
182 network driver maintains under Subsection (1) or (2):

183 (a) satisfies the security requirements of Section 41-12a-301; and

184 (b) may, along with insurance maintained under Subsection (3), be placed with:

185 (i) an insurer that is certified under Section 31A-4-103; or

186 (ii) a surplus lines insurer licensed under Section ~~[31A-23a-104]~~ 31A-15-103.

187 (9) An insurer that provides coverage for a transportation network driver explicitly for  
188 the transportation network driver's transportation network services under Subsection (1) or (2)  
189 shall have the duty to defend a liability claim arising from an occurrence while the  
190 transportation network driver is providing transportation network services.

191 (10) (a) If insurance a transportation network driver maintains under Subsection (1),  
192 (2), or (3) lapses or ceases to exist, a transportation network company shall provide coverage  
193 complying with Subsection (1), (2), or (3) beginning with the first dollar of a claim.

194 (b) Subsection (10)(a) does not apply to comprehensive or collision insurance  
195 otherwise required under Subsection (3) if, at the time of a claim for damage to a vehicle being  
196 used to provide transportation network services, there is no outstanding lien on the vehicle.

197 (11) (a) An insurance policy that a transportation network company or transportation  
198 network driver maintains under Subsection (1) or (2) may not provide that coverage is  
199 dependent on a transportation network driver's personal automobile insurance policy first  
200 denying a claim.

201 (b) Subsection (11)(a) does not apply to coverage a transportation network company  
202 provides under Subsection (9) in the event a transportation network driver's coverage under  
203 Subsection (1) or (2) lapses or ceases to exist.

204 (12) A personal automobile insurer:

205 (a) notwithstanding Section 31A-22-302, may offer a personal automobile liability  
206 policy that excludes coverage for a loss that arises from the use of the insured vehicle to  
207 provide transportation network services; and

208 (b) does not have the duty to defend or indemnify a loss if an exclusion described in  
209 Subsection (12)(a) excludes coverage according to the policy's terms.

210 Section 2. Section **31A-1-301** is amended to read:

211 **31A-1-301. Definitions.**

212 As used in this title, unless otherwise specified:

213 (1) (a) "Accident and health insurance" means insurance to provide protection against  
214 economic losses resulting from:

215 (i) a medical condition including:

216 (A) a medical care expense; or

217 (B) the risk of disability;

- 218 (ii) accident; or  
219 (iii) sickness.
- 220 (b) "Accident and health insurance":  
221 (i) includes a contract with disability contingencies including:  
222 (A) an income replacement contract;  
223 (B) a health care contract;  
224 (C) an expense reimbursement contract;  
225 (D) a credit accident and health contract;  
226 (E) a continuing care contract; and  
227 (F) a long-term care contract; and  
228 (ii) may provide:  
229 (A) hospital coverage;  
230 (B) surgical coverage;  
231 (C) medical coverage;  
232 (D) loss of income coverage;  
233 (E) prescription drug coverage;  
234 (F) dental coverage; or  
235 (G) vision coverage.
- 236 (c) "Accident and health insurance" does not include workers' compensation insurance.  
237 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title  
238 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 239 (3) "Administrator" is defined in Subsection (166).  
240 (4) "Adult" means an individual who has attained the age of at least 18 years.  
241 (5) "Affiliate" means a person who controls, is controlled by, or is under common  
242 control with, another person. A corporation is an affiliate of another corporation, regardless of  
243 ownership, if substantially the same group of individuals manage the corporations.
- 244 (6) "Agency" means:  
245 (a) a person other than an individual, including a sole proprietorship by which an  
246 individual does business under an assumed name; and  
247 (b) an insurance organization licensed or required to be licensed under Section  
248 31A-23a-301, 31A-25-207, or 31A-26-209.

- 249 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 250 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 251 (9) "Annuity" means an agreement to make periodical payments for a period certain or  
252 over the lifetime of one or more individuals if the making or continuance of all or some of the  
253 series of the payments, or the amount of the payment, is dependent upon the continuance of  
254 human life.
- 255 (10) "Application" means a document:
- 256 (a) (i) completed by an applicant to provide information about the risk to be insured;  
257 and  
258 (ii) that contains information that is used by the insurer to evaluate risk and decide  
259 whether to:
- 260 (A) insure the risk under:  
261 (I) the coverage as originally offered; or  
262 (II) a modification of the coverage as originally offered; or  
263 (B) decline to insure the risk; or  
264 (b) used by the insurer to gather information from the applicant before issuance of an  
265 annuity contract.
- 266 (11) "Articles" or "articles of incorporation" means:
- 267 (a) the original articles;  
268 (b) a special law;  
269 (c) a charter;  
270 (d) an amendment;  
271 (e) restated articles;  
272 (f) articles of merger or consolidation;  
273 (g) a trust instrument;  
274 (h) another constitutive document for a trust or other entity that is not a corporation;  
275 and  
276 (i) an amendment to an item listed in Subsections (11)(a) through (h).
- 277 (12) "Bail bond insurance" means a guarantee that a person will attend court when  
278 required, up to and including surrender of the person in execution of a sentence imposed under  
279 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

- 280 (13) "Binder" means the same as that term is defined in Section 31A-21-102.
- 281 (14) "Blanket insurance policy" means a group policy covering a defined class of  
282 persons:
- 283 (a) without individual underwriting or application; and  
284 (b) that is determined by definition without designating each person covered.
- 285 (15) "Board," "board of trustees," or "board of directors" means the group of persons  
286 with responsibility over, or management of, a corporation, however designated.
- 287 (16) "Bona fide office" means a physical office in this state:
- 288 (a) that is open to the public;  
289 (b) that is staffed during regular business hours on regular business days; and  
290 (c) at which the public may appear in person to obtain services.
- 291 (17) "Business entity" means:
- 292 (a) a corporation;  
293 (b) an association;  
294 (c) a partnership;  
295 (d) a limited liability company;  
296 (e) a limited liability partnership; or  
297 (f) another legal entity.
- 298 (18) "Business of insurance" is defined in Subsection (89).
- 299 (19) "Business plan" means the information required to be supplied to the  
300 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required  
301 when these subsections apply by reference under:
- 302 (a) Section 31A-7-201;  
303 (b) Section 31A-8-205; or  
304 (c) Subsection 31A-9-205(2).
- 305 (20) (a) "Bylaws" means the rules adopted for the regulation or management of a  
306 corporation's affairs, however designated.
- 307 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a  
308 corporation.
- 309 (21) "Captive insurance company" means:
- 310 (a) an insurer:

- 311 (i) owned by another organization; and
- 312 (ii) whose exclusive purpose is to insure risks of the parent organization and an  
313 affiliated company; or
- 314 (b) in the case of a group or association, an insurer:
- 315 (i) owned by the insureds; and
- 316 (ii) whose exclusive purpose is to insure risks of:
- 317 (A) a member organization;
- 318 (B) a group member; or
- 319 (C) an affiliate of:
- 320 (I) a member organization; or
- 321 (II) a group member.
- 322 (22) "Casualty insurance" means liability insurance.
- 323 (23) "Certificate" means evidence of insurance given to:
- 324 (a) an insured under a group insurance policy; or
- 325 (b) a third party.
- 326 (24) "Certificate of authority" is included within the term "license."
- 327 (25) "Claim," unless the context otherwise requires, means a request or demand on an  
328 insurer for payment of a benefit according to the terms of an insurance policy.
- 329 (26) "Claims-made coverage" means an insurance contract or provision limiting  
330 coverage under a policy insuring against legal liability to claims that are first made against the  
331 insured while the policy is in force.
- 332 (27) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance  
333 commissioner.
- 334 (b) When appropriate, the terms listed in Subsection (27)(a) apply to the equivalent  
335 supervisory official of another jurisdiction.
- 336 (28) (a) "Continuing care insurance" means insurance that:
- 337 (i) provides board and lodging;
- 338 (ii) provides one or more of the following:
- 339 (A) a personal service;
- 340 (B) a nursing service;
- 341 (C) a medical service; or

342 (D) any other health-related service; and

343 (iii) provides the coverage described in this Subsection (28)(a) under an agreement  
344 effective:

345 (A) for the life of the insured; or

346 (B) for a period in excess of one year.

347 (b) Insurance is continuing care insurance regardless of whether or not the board and  
348 lodging are provided at the same location as a service described in Subsection (28)(a)(ii).

349 (29) (a) "Control," "controlling," "controlled," or "under common control" means the  
350 direct or indirect possession of the power to direct or cause the direction of the management  
351 and policies of a person. This control may be:

352 (i) by contract;

353 (ii) by common management;

354 (iii) through the ownership of voting securities; or

355 (iv) by a means other than those described in Subsections (29)(a)(i) through (iii).

356 (b) There is no presumption that an individual holding an official position with another  
357 person controls that person solely by reason of the position.

358 (c) A person having a contract or arrangement giving control is considered to have  
359 control despite the illegality or invalidity of the contract or arrangement.

360 (d) There is a rebuttable presumption of control in a person who directly or indirectly  
361 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the  
362 voting securities of another person.

363 (30) "Controlled insurer" means a licensed insurer that is either directly or indirectly  
364 controlled by a producer.

365 (31) "Controlling person" means a person that directly or indirectly has the power to  
366 direct or cause to be directed, the management, control, or activities of a reinsurance  
367 intermediary.

368 (32) "Controlling producer" means a producer who directly or indirectly controls an  
369 insurer.

370 (33) (a) "Corporation" means an insurance corporation, except when referring to:

371 (i) a corporation doing business:

372 (A) as:

- 373 (I) an insurance producer;
- 374 (II) a surplus lines producer;
- 375 (III) a limited line producer;
- 376 (IV) a consultant;
- 377 (V) a managing general agent;
- 378 (VI) a reinsurance intermediary;
- 379 (VII) a third party administrator; or
- 380 (VIII) an adjuster; and
- 381 (B) under:
- 382 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 383 Reinsurance Intermediaries;
- 384 (II) Chapter 25, Third Party Administrators; or
- 385 (III) Chapter 26, Insurance Adjusters; or
- 386 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 387 Holding Companies.
- 388 (b) "Stock corporation" means a stock insurance corporation.
- 389 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 390 (34) (a) "Creditable coverage" has the same meaning as provided in federal regulations
- 391 adopted pursuant to the Health Insurance Portability and Accountability Act.
- 392 (b) "Creditable coverage" includes coverage that is offered through a public health plan
- 393 such as:
- 394 (i) the Primary Care Network Program under a Medicaid primary care network
- 395 demonstration waiver obtained subject to Section 26-18-3;
- 396 (ii) the Children's Health Insurance Program under Section 26-40-106; or
- 397 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
- 398 No. 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. No.
- 399 109-415.
- 400 (35) "Credit accident and health insurance" means insurance on a debtor to provide
- 401 indemnity for payments coming due on a specific loan or other credit transaction while the
- 402 debtor has a disability.
- 403 (36) (a) "Credit insurance" means insurance offered in connection with an extension of

404 credit that is limited to partially or wholly extinguishing that credit obligation.

405 (b) "Credit insurance" includes:

406 (i) credit accident and health insurance;

407 (ii) credit life insurance;

408 (iii) credit property insurance;

409 (iv) credit unemployment insurance;

410 (v) guaranteed automobile protection insurance;

411 (vi) involuntary unemployment insurance;

412 (vii) mortgage accident and health insurance;

413 (viii) mortgage guaranty insurance; and

414 (ix) mortgage life insurance.

415 (37) "Credit life insurance" means insurance on the life of a debtor in connection with  
416 an extension of credit that pays a person if the debtor dies.

417 (38) "Creditor" means a person, including an insured, having a claim, whether:

418 (a) matured;

419 (b) unmatured;

420 (c) liquidated;

421 (d) unliquidated;

422 (e) secured;

423 (f) unsecured;

424 (g) absolute;

425 (h) fixed; or

426 (i) contingent.

427 (39) "Credit property insurance" means insurance:

428 (a) offered in connection with an extension of credit; and

429 (b) that protects the property until the debt is paid.

430 (40) "Credit unemployment insurance" means insurance:

431 (a) offered in connection with an extension of credit; and

432 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:

433 (i) specific loan; or

434 (ii) credit transaction.

435 (41) (a) "Crop insurance" means insurance providing protection against damage to  
436 crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation,  
437 disease, or other yield-reducing conditions or perils that is:

- 438 (i) provided by the private insurance market; or
- 439 (ii) subsidized by the Federal Crop Insurance Corporation.

440 (b) "Crop insurance" includes multiperil crop insurance.

441 (42) (a) "Customer service representative" means a person that provides an insurance  
442 service and insurance product information:

- 443 (i) for the customer service representative's:
  - 444 (A) producer;
  - 445 (B) surplus lines producer; or
  - 446 (C) consultant employer; and
- 447 (ii) to the customer service representative's employer's:
  - 448 (A) customer;
  - 449 (B) client; or
  - 450 (C) organization.

451 (b) A customer service representative may only operate within the scope of authority of  
452 the customer service representative's producer, surplus lines producer, or consultant employer.

453 (43) "Deadline" means a final date or time:

- 454 (a) imposed by:
  - 455 (i) statute;
  - 456 (ii) rule; or
  - 457 (iii) order; and
- 458 (b) by which a required filing or payment must be received by the department.

459 (44) "Deemer clause" means a provision under this title under which upon the  
460 occurrence of a condition precedent, the commissioner is considered to have taken a specific  
461 action. If the statute so provides, a condition precedent may be the commissioner's failure to  
462 take a specific action.

463 (45) "Degree of relationship" means the number of steps between two persons  
464 determined by counting the generations separating one person from a common ancestor and  
465 then counting the generations to the other person.

- 466 (46) "Department" means the Insurance Department.
- 467 (47) "Director" means a member of the board of directors of a corporation.
- 468 (48) "Disability" means a physiological or psychological condition that partially or  
469 totally limits an individual's ability to:
- 470 (a) perform the duties of:
- 471 (i) that individual's occupation; or
- 472 (ii) an occupation for which the individual is reasonably suited by education, training,  
473 or experience; or
- 474 (b) perform two or more of the following basic activities of daily living:
- 475 (i) eating;
- 476 (ii) toileting;
- 477 (iii) transferring;
- 478 (iv) bathing; or
- 479 (v) dressing.
- 480 (49) "Disability income insurance" is defined in Subsection (80).
- 481 (50) "Domestic insurer" means an insurer organized under the laws of this state.
- 482 (51) "Domiciliary state" means the state in which an insurer:
- 483 (a) is incorporated;
- 484 (b) is organized; or
- 485 (c) in the case of an alien insurer, enters into the United States.
- 486 (52) (a) "Eligible employee" means:
- 487 (i) an employee who:
- 488 (A) works on a full-time basis; and
- 489 (B) has a normal work week of 30 or more hours; or
- 490 (ii) a person described in Subsection (52)(b).
- 491 (b) "Eligible employee" includes, if the individual is included under a health benefit  
492 plan of a small employer:
- 493 (i) a sole proprietor;
- 494 (ii) a partner in a partnership; or
- 495 (iii) an independent contractor.
- 496 (c) "Eligible employee" does not include, unless eligible under Subsection (52)(b):

- 497 (i) an individual who works on a temporary or substitute basis for a small employer;
- 498 (ii) an employer's spouse; or
- 499 (iii) a dependent of an employer.
- 500 (53) "Employee" means an individual employed by an employer.
- 501 (54) "Employee benefits" means one or more benefits or services provided to:
- 502 (a) an employee; or
- 503 (b) a dependent of an employee.
- 504 (55) (a) "Employee welfare fund" means a fund:
- 505 (i) established or maintained, whether directly or through a trustee, by:
- 506 (A) one or more employers;
- 507 (B) one or more labor organizations; or
- 508 (C) a combination of employers and labor organizations; and
- 509 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 510 from investments of the fund:
- 511 (A) by or on behalf of an employer doing business in this state; or
- 512 (B) for the benefit of a person employed in this state.
- 513 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 514 revenues.
- 515 (56) "Endorsement" means a written agreement attached to a policy or certificate to
- 516 modify the policy or certificate coverage.
- 517 (57) "Enrollment date," with respect to a health benefit plan, means:
- 518 (a) the first day of coverage; or
- 519 (b) if there is a waiting period, the first day of the waiting period.
- 520 (58) "Enterprise risk" means an activity, circumstance, event, or series of events
- 521 involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a
- 522 material adverse effect upon the financial condition or liquidity of the insurer or its insurance
- 523 holding company system as a whole, including anything that would cause:
- 524 (a) the insurer's risk-based capital to fall into an action or control level as set forth in
- 525 Sections 31A-17-601 through 31A-17-613; or
- 526 (b) the insurer to be in hazardous financial condition set forth in Section 31A-27a-101.
- 527 (59) (a) "Escrow" means:

528 (i) a transaction that effects the sale, transfer, encumbering, or leasing of real property,  
529 when a person not a party to the transaction, and neither having nor acquiring an interest in the  
530 title, performs, in accordance with the written instructions or terms of the written agreement  
531 between the parties to the transaction, any of the following actions:

532 (A) the explanation, holding, or creation of a document; or

533 (B) the receipt, deposit, and disbursement of money;

534 (ii) a settlement or closing involving:

535 (A) a mobile home;

536 (B) a grazing right;

537 (C) a water right; or

538 (D) other personal property authorized by the commissioner.

539 (b) "Escrow" does not include:

540 (i) the following notarial acts performed by a notary within the state:

541 (A) an acknowledgment;

542 (B) a copy certification;

543 (C) jurat; and

544 (D) an oath or affirmation;

545 (ii) the receipt or delivery of a document; or

546 (iii) the receipt of money for delivery to the escrow agent.

547 (60) "Escrow agent" means an agency title insurance producer meeting the  
548 requirements of Sections 31A-4-107, 31A-14-211, and 31A-23a-204, who is acting through an  
549 individual title insurance producer licensed with an escrow subline of authority.

550 (61) (a) "Excludes" is not exhaustive and does not mean that another thing is not also  
551 excluded.

552 (b) The items listed in a list using the term "excludes" are representative examples for  
553 use in interpretation of this title.

554 (62) "Exclusion" means for the purposes of accident and health insurance that an  
555 insurer does not provide insurance coverage, for whatever reason, for one of the following:

556 (a) a specific physical condition;

557 (b) a specific medical procedure;

558 (c) a specific disease or disorder; or

- 559 (d) a specific prescription drug or class of prescription drugs.
- 560 (63) "Expense reimbursement insurance" means insurance:
- 561 (a) written to provide a payment for an expense relating to hospital confinement
- 562 resulting from illness or injury; and
- 563 (b) written:
- 564 (i) as a daily limit for a specific number of days in a hospital; and
- 565 (ii) to have a one or two day waiting period following a hospitalization.
- 566 (64) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
- 567 a position of public or private trust.
- 568 (65) (a) "Filed" means that a filing is:
- 569 (i) submitted to the department as required by and in accordance with applicable
- 570 statute, rule, or filing order;
- 571 (ii) received by the department within the time period provided in applicable statute,
- 572 rule, or filing order; and
- 573 (iii) accompanied by the appropriate fee in accordance with:
- 574 (A) Section 31A-3-103; or
- 575 (B) rule.
- 576 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 577 submitted in accordance with Subsection (65)(a).
- 578 (66) "Filing," when used as a noun, means an item required to be filed with the
- 579 department including:
- 580 (a) a policy;
- 581 (b) a rate;
- 582 (c) a form;
- 583 (d) a document;
- 584 (e) a plan;
- 585 (f) a manual;
- 586 (g) an application;
- 587 (h) a report;
- 588 (i) a certificate;
- 589 (j) an endorsement;

- 590 (k) an actuarial certification;
- 591 (l) a licensee annual statement;
- 592 (m) a licensee renewal application;
- 593 (n) an advertisement;
- 594 (o) a binder; or
- 595 (p) an outline of coverage.
- 596 (67) "First party insurance" means an insurance policy or contract in which the insurer
- 597 agrees to pay a claim submitted to it by the insured for the insured's losses.
- 598 (68) "Foreign insurer" means an insurer domiciled outside of this state, including an
- 599 alien insurer.
- 600 (69) (a) "Form" means one of the following prepared for general use:
- 601 (i) a policy;
- 602 (ii) a certificate;
- 603 (iii) an application;
- 604 (iv) an outline of coverage; or
- 605 (v) an endorsement.
- 606 (b) "Form" does not include a document specially prepared for use in an individual
- 607 case.
- 608 (70) "Franchise insurance" means an individual insurance policy provided through a
- 609 mass marketing arrangement involving a defined class of persons related in some way other
- 610 than through the purchase of insurance.
- 611 (71) "General lines of authority" include:
- 612 (a) the general lines of insurance in Subsection (72);
- 613 (b) title insurance under one of the following sublines of authority:
- 614 (i) title examination, including authority to act as a title marketing representative;
- 615 (ii) escrow, including authority to act as a title marketing representative; and
- 616 (iii) title marketing representative only;
- 617 (c) surplus lines;
- 618 (d) workers' compensation; and
- 619 (e) another line of insurance that the commissioner considers necessary to recognize in
- 620 the public interest.

621 (72) "General lines of insurance" include:

622 (a) accident and health;

623 (b) casualty;

624 (c) life;

625 (d) personal lines;

626 (e) property; and

627 (f) variable contracts, including variable life and annuity.

628 (73) "Group health plan" means an employee welfare benefit plan to the extent that the  
629 plan provides medical care:

630 (a) (i) to an employee; or

631 (ii) to a dependent of an employee; and

632 (b) (i) directly;

633 (ii) through insurance reimbursement; or

634 (iii) through another method.

635 (74) (a) "Group insurance policy" means a policy covering a group of persons that is  
636 issued:

637 (i) to a policyholder on behalf of the group; and

638 (ii) for the benefit of a member of the group who is selected under a procedure defined

639 in:

640 (A) the policy; or

641 (B) an agreement that is collateral to the policy.

642 (b) A group insurance policy may include a member of the policyholder's family or a  
643 dependent.

644 (75) "Guaranteed automobile protection insurance" means insurance offered in  
645 connection with an extension of credit that pays the difference in amount between the  
646 insurance settlement and the balance of the loan if the insured automobile is a total loss.

647 (76) (a) Except as provided in Subsection (76)(b), "health benefit plan" means a policy  
648 or certificate that:

649 (i) provides health care insurance;

650 (ii) provides major medical expense insurance; or

651 (iii) is offered as a substitute for hospital or medical expense insurance, such as:

- 652 (A) a hospital confinement indemnity; or  
653 (B) a limited benefit plan.
- 654 (b) "Health benefit plan" does not include a policy or certificate that:  
655 (i) provides benefits solely for:  
656 (A) accident;  
657 (B) dental;  
658 (C) income replacement;  
659 (D) long-term care;  
660 (E) a Medicare supplement;  
661 (F) a specified disease;  
662 (G) vision; or  
663 (H) a short-term limited duration; or  
664 (ii) is offered and marketed as supplemental health insurance.
- 665 (77) "Health care" means any of the following intended for use in the diagnosis,  
666 treatment, mitigation, or prevention of a human ailment or impairment:  
667 (a) a professional service;  
668 (b) a personal service;  
669 (c) a facility;  
670 (d) equipment;  
671 (e) a device;  
672 (f) supplies; or  
673 (g) medicine.
- 674 (78) (a) "Health care insurance" or "health insurance" means insurance providing:  
675 (i) a health care benefit; or  
676 (ii) payment of an incurred health care expense.
- 677 (b) "Health care insurance" or "health insurance" does not include accident and health  
678 insurance providing a benefit for:  
679 (i) replacement of income;  
680 (ii) short-term accident;  
681 (iii) fixed indemnity;  
682 (iv) credit accident and health;

683 (v) supplements to liability;  
684 (vi) workers' compensation;  
685 (vii) automobile medical payment;  
686 (viii) no-fault automobile;  
687 (ix) equivalent self-insurance; or  
688 (x) a type of accident and health insurance coverage that is a part of or attached to  
689 another type of policy.

690 (79) "Health Insurance Portability and Accountability Act" means the Health Insurance  
691 Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.

692 (80) "Income replacement insurance" or "disability income insurance" means insurance  
693 written to provide payments to replace income lost from accident or sickness.

694 (81) "Indemnity" means the payment of an amount to offset all or part of an insured  
695 loss.

696 (82) "Independent adjuster" means an insurance adjuster required to be licensed under  
697 Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.

698 (83) "Independently procured insurance" means insurance procured under Section  
699 31A-15-104.

700 (84) "Individual" means a natural person.

701 (85) "Inland marine insurance" includes insurance covering:

- 702 (a) property in transit on or over land;  
703 (b) property in transit over water by means other than boat or ship;  
704 (c) bailee liability;  
705 (d) fixed transportation property such as bridges, electric transmission systems, radio  
706 and television transmission towers and tunnels; and  
707 (e) personal and commercial property floaters.

708 (86) "Insolvency" means that:

- 709 (a) an insurer is unable to pay its debts or meet its obligations as the debts and  
710 obligations mature;  
711 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level  
712 RBC under Subsection 31A-17-601(8)(c); or  
713 (c) an insurer is determined to be hazardous under this title.

- 714 (87) (a) "Insurance" means:
- 715 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
- 716 persons to one or more other persons; or
- 717 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
- 718 group of persons that includes the person seeking to distribute that person's risk.
- 719 (b) "Insurance" includes:
- 720 (i) a risk distributing arrangement providing for compensation or replacement for
- 721 damages or loss through the provision of a service or a benefit in kind;
- 722 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
- 723 business and not as merely incidental to a business transaction; and
- 724 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
- 725 but with a class of persons who have agreed to share the risk.
- 726 (88) "Insurance adjuster" means a person who directs or conducts the investigation,
- 727 negotiation, or settlement of a claim under an insurance policy other than life insurance or an
- 728 annuity, on behalf of an insurer, policyholder, or a claimant under an insurance policy.
- 729 (89) "Insurance business" or "business of insurance" includes:
- 730 (a) providing health care insurance by an organization that is or is required to be
- 731 licensed under this title;
- 732 (b) providing a benefit to an employee in the event of a contingency not within the
- 733 control of the employee, in which the employee is entitled to the benefit as a right, which
- 734 benefit may be provided either:
- 735 (i) by a single employer or by multiple employer groups; or
- 736 (ii) through one or more trusts, associations, or other entities;
- 737 (c) providing an annuity:
- 738 (i) including an annuity issued in return for a gift; and
- 739 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
- 740 and (3);
- 741 (d) providing the characteristic services of a motor club as outlined in Subsection
- 742 (117);
- 743 (e) providing another person with insurance;
- 744 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,

- 745 or surety, a contract or policy of title insurance;
- 746 (g) transacting or proposing to transact any phase of title insurance, including:
- 747 (i) solicitation;
- 748 (ii) negotiation preliminary to execution;
- 749 (iii) execution of a contract of title insurance;
- 750 (iv) insuring; and
- 751 (v) transacting matters subsequent to the execution of the contract and arising out of
- 752 the contract, including reinsurance;
- 753 (h) transacting or proposing a life settlement; and
- 754 (i) doing, or proposing to do, any business in substance equivalent to Subsections
- 755 (89)(a) through (h) in a manner designed to evade this title.
- 756 (90) "Insurance consultant" or "consultant" means a person who:
- 757 (a) advises another person about insurance needs and coverages;
- 758 (b) is compensated by the person advised on a basis not directly related to the insurance
- 759 placed; and
- 760 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 761 indirectly by an insurer or producer for advice given.
- 762 (91) "Insurance holding company system" means a group of two or more affiliated
- 763 persons, at least one of whom is an insurer.
- 764 (92) (a) "Insurance producer" or "producer" means a person licensed or required to be
- 765 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 766 (b) (i) "Producer for the insurer" means a producer who is compensated directly or
- 767 indirectly by an insurer for selling, soliciting, or negotiating an insurance product of that
- 768 insurer.
- 769 (ii) "Producer for the insurer" may be referred to as an "agent."
- 770 (c) (i) "Producer for the insured" means a producer who:
- 771 (A) is compensated directly and only by an insurance customer or an insured; and
- 772 (B) receives no compensation directly or indirectly from an insurer for selling,
- 773 soliciting, or negotiating an insurance product of that insurer to an insurance customer or
- 774 insured.
- 775 (ii) "Producer for the insured" may be referred to as a "broker."

776 (93) (a) "Insured" means a person to whom or for whose benefit an insurer makes a  
777 promise in an insurance policy and includes:

- 778 (i) a policyholder;
- 779 (ii) a subscriber;
- 780 (iii) a member; and
- 781 (iv) a beneficiary.

782 (b) The definition in Subsection (93)(a):

- 783 (i) applies only to this title; and
- 784 (ii) does not define the meaning of this word as used in an insurance policy or  
785 certificate.

786 (94) (a) "Insurer" means a person doing an insurance business as a principal including:

- 787 (i) a fraternal benefit society;
- 788 (ii) an issuer of a gift annuity other than an annuity specified in Subsections  
789 31A-22-1305(2) and (3);
- 790 (iii) a motor club;
- 791 (iv) an employee welfare plan; and
- 792 (v) a person purporting or intending to do an insurance business as a principal on that  
793 person's own account.

794 (b) "Insurer" does not include a governmental entity to the extent the governmental  
795 entity is engaged in an activity described in Section 31A-12-107.

796 (95) "Interinsurance exchange" is defined in Subsection (148).

797 (96) "Involuntary unemployment insurance" means insurance:

- 798 (a) offered in connection with an extension of credit; and
- 799 (b) that provides indemnity if the debtor is involuntarily unemployed for payments  
800 coming due on a:

- 801 (i) specific loan; or
- 802 (ii) credit transaction.

803 (97) (a) "Large employer," in connection with a health benefit plan, means an employer  
804 who, with respect to a calendar year and to a plan year:

- 805 ~~(a)~~ (i) employed an average of at least 51 ~~eligible~~ employees on ~~each~~ business  
806 ~~day~~ days during the preceding calendar year; and

807            ~~[(b)]~~ (ii) employs at least ~~[two employees]~~ one employee on the first day of the plan  
808 year.

809            (b) The number of employees shall be determined using the method set forth in 26  
810 U.S.C. Sec. 4980H(c)(2).

811            (98) "Late enrollee," with respect to an employer health benefit plan, means an  
812 individual whose enrollment is a late enrollment.

813            (99) "Late enrollment," with respect to an employer health benefit plan, means  
814 enrollment of an individual other than:

815            (a) on the earliest date on which coverage can become effective for the individual  
816 under the terms of the plan; or

817            (b) through special enrollment.

818            (100) (a) Except for a retainer contract or legal assistance described in Section  
819 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a  
820 specified legal expense.

821            (b) "Legal expense insurance" includes an arrangement that creates a reasonable  
822 expectation of an enforceable right.

823            (c) "Legal expense insurance" does not include the provision of, or reimbursement for,  
824 legal services incidental to other insurance coverage.

825            (101) (a) "Liability insurance" means insurance against liability:

826            (i) for death, injury, or disability of a human being, or for damage to property,  
827 exclusive of the coverages under:

828            (A) Subsection (111) for medical malpractice insurance;

829            (B) Subsection (139) for professional liability insurance; and

830            (C) Subsection (175) for workers' compensation insurance;

831            (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the

832 insured who is injured, irrespective of legal liability of the insured, when issued with or

833 supplemental to insurance against legal liability for the death, injury, or disability of a human

834 being, exclusive of the coverages under:

835            (A) Subsection (111) for medical malpractice insurance;

836            (B) Subsection (139) for professional liability insurance; and

837            (C) Subsection (175) for workers' compensation insurance;

- 838 (iii) for loss or damage to property resulting from an accident to or explosion of a  
839 boiler, pipe, pressure container, machinery, or apparatus;
- 840 (iv) for loss or damage to property caused by:
- 841 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or  
842 (B) water entering through a leak or opening in a building; or
- 843 (v) for other loss or damage properly the subject of insurance not within another kind  
844 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.
- 845 (b) "Liability insurance" includes:
- 846 (i) vehicle liability insurance;
- 847 (ii) residential dwelling liability insurance; and
- 848 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,  
849 boiler, machinery, or apparatus of any kind when done in connection with insurance on the  
850 elevator, boiler, machinery, or apparatus.
- 851 (102) (a) "License" means authorization issued by the commissioner to engage in an  
852 activity that is part of or related to the insurance business.
- 853 (b) "License" includes a certificate of authority issued to an insurer.
- 854 (103) (a) "Life insurance" means:
- 855 (i) insurance on a human life; and
- 856 (ii) insurance pertaining to or connected with human life.
- 857 (b) The business of life insurance includes:
- 858 (i) granting a death benefit;
- 859 (ii) granting an annuity benefit;
- 860 (iii) granting an endowment benefit;
- 861 (iv) granting an additional benefit in the event of death by accident;
- 862 (v) granting an additional benefit to safeguard the policy against lapse; and
- 863 (vi) providing an optional method of settlement of proceeds.
- 864 (104) "Limited license" means a license that:
- 865 (a) is issued for a specific product of insurance; and
- 866 (b) limits an individual or agency to transact only for that product or insurance.
- 867 (105) "Limited line credit insurance" includes the following forms of insurance:
- 868 (a) credit life;

869 (b) credit accident and health;  
870 (c) credit property;  
871 (d) credit unemployment;  
872 (e) involuntary unemployment;  
873 (f) mortgage life;  
874 (g) mortgage guaranty;  
875 (h) mortgage accident and health;  
876 (i) guaranteed automobile protection; and  
877 (j) another form of insurance offered in connection with an extension of credit that:  
878 (i) is limited to partially or wholly extinguishing the credit obligation; and  
879 (ii) the commissioner determines by rule should be designated as a form of limited line  
880 credit insurance.

881 (106) "Limited line credit insurance producer" means a person who sells, solicits, or  
882 negotiates one or more forms of limited line credit insurance coverage to an individual through  
883 a master, corporate, group, or individual policy.

884 (107) "Limited line insurance" includes:

885 (a) bail bond;  
886 (b) limited line credit insurance;  
887 (c) legal expense insurance;  
888 (d) motor club insurance;  
889 (e) car rental related insurance;  
890 (f) travel insurance;  
891 (g) crop insurance;  
892 (h) self-service storage insurance;  
893 (i) guaranteed asset protection waiver;  
894 (j) portable electronics insurance; and  
895 (k) another form of limited insurance that the commissioner determines by rule should  
896 be designated a form of limited line insurance.

897 (108) "Limited lines authority" includes the lines of insurance listed in Subsection

898 (107).

899 (109) "Limited lines producer" means a person who sells, solicits, or negotiates limited

900 lines insurance.

901 (110) (a) "Long-term care insurance" means an insurance policy or rider advertised,  
902 marketed, offered, or designated to provide coverage:

903 (i) in a setting other than an acute care unit of a hospital;

904 (ii) for not less than 12 consecutive months for a covered person on the basis of:

905 (A) expenses incurred;

906 (B) indemnity;

907 (C) prepayment; or

908 (D) another method;

909 (iii) for one or more necessary or medically necessary services that are:

910 (A) diagnostic;

911 (B) preventative;

912 (C) therapeutic;

913 (D) rehabilitative;

914 (E) maintenance; or

915 (F) personal care; and

916 (iv) that may be issued by:

917 (A) an insurer;

918 (B) a fraternal benefit society;

919 (C) (I) a nonprofit health hospital; and

920 (II) a medical service corporation;

921 (D) a prepaid health plan;

922 (E) a health maintenance organization; or

923 (F) an entity similar to the entities described in Subsections (110)(a)(iv)(A) through (E)

924 to the extent that the entity is otherwise authorized to issue life or health care insurance.

925 (b) "Long-term care insurance" includes:

926 (i) any of the following that provide directly or supplement long-term care insurance:

927 (A) a group or individual annuity or rider; or

928 (B) a life insurance policy or rider;

929 (ii) a policy or rider that provides for payment of benefits on the basis of:

930 (A) cognitive impairment; or

- 931 (B) functional capacity; or
- 932 (iii) a qualified long-term care insurance contract.
- 933 (c) "Long-term care insurance" does not include:
- 934 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 935 (ii) basic hospital expense coverage;
- 936 (iii) basic medical/surgical expense coverage;
- 937 (iv) hospital confinement indemnity coverage;
- 938 (v) major medical expense coverage;
- 939 (vi) income replacement or related asset-protection coverage;
- 940 (vii) accident only coverage;
- 941 (viii) coverage for a specified:
- 942 (A) disease; or
- 943 (B) accident;
- 944 (ix) limited benefit health coverage; or
- 945 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 946 lump sum payment:
- 947 (A) if the following are not conditioned on the receipt of long-term care:
- 948 (I) benefits; or
- 949 (II) eligibility; and
- 950 (B) the coverage is for one or more the following qualifying events:
- 951 (I) terminal illness;
- 952 (II) medical conditions requiring extraordinary medical intervention; or
- 953 (III) permanent institutional confinement.
- 954 (111) "Medical malpractice insurance" means insurance against legal liability incident
- 955 to the practice and provision of a medical service other than the practice and provision of a
- 956 dental service.
- 957 (112) "Member" means a person having membership rights in an insurance
- 958 corporation.
- 959 (113) "Minimum capital" or "minimum required capital" means the capital that must be
- 960 constantly maintained by a stock insurance corporation as required by statute.
- 961 (114) "Mortgage accident and health insurance" means insurance offered in connection

962 with an extension of credit that provides indemnity for payments coming due on a mortgage  
963 while the debtor has a disability.

964 (115) "Mortgage guaranty insurance" means surety insurance under which a mortgagee  
965 or other creditor is indemnified against losses caused by the default of a debtor.

966 (116) "Mortgage life insurance" means insurance on the life of a debtor in connection  
967 with an extension of credit that pays if the debtor dies.

968 (117) "Motor club" means a person:

969 (a) licensed under:

970 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

971 (ii) Chapter 11, Motor Clubs; or

972 (iii) Chapter 14, Foreign Insurers; and

973 (b) that promises for an advance consideration to provide for a stated period of time  
974 one or more:

975 (i) legal services under Subsection 31A-11-102(1)(b);

976 (ii) bail services under Subsection 31A-11-102(1)(c); or

977 (iii) (A) trip reimbursement;

978 (B) towing services;

979 (C) emergency road services;

980 (D) stolen automobile services;

981 (E) a combination of the services listed in Subsections (117)(b)(iii)(A) through (D); or

982 (F) other services given in Subsections 31A-11-102(1)(b) through (f).

983 (118) "Mutual" means a mutual insurance corporation.

984 (119) "Network plan" means health care insurance:

985 (a) that is issued by an insurer; and

986 (b) under which the financing and delivery of medical care is provided, in whole or in  
987 part, through a defined set of providers under contract with the insurer, including the financing  
988 and delivery of an item paid for as medical care.

989 (120) "Nonparticipating" means a plan of insurance under which the insured is not  
990 entitled to receive a dividend representing a share of the surplus of the insurer.

991 (121) "Ocean marine insurance" means insurance against loss of or damage to:

992 (a) ships or hulls of ships;

993 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,  
994 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia  
995 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;

996 (c) earnings such as freight, passage money, commissions, or profits derived from  
997 transporting goods or people upon or across the oceans or inland waterways; or

998 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,  
999 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons  
1000 in connection with maritime activity.

1001 (122) "Order" means an order of the commissioner.

1002 (123) "Outline of coverage" means a summary that explains an accident and health  
1003 insurance policy.

1004 (124) "Participating" means a plan of insurance under which the insured is entitled to  
1005 receive a dividend representing a share of the surplus of the insurer.

1006 (125) "Participation," as used in a health benefit plan, means a requirement relating to  
1007 the minimum percentage of eligible employees that must be enrolled in relation to the total  
1008 number of eligible employees of an employer reduced by each eligible employee who  
1009 voluntarily declines coverage under the plan because the employee:

1010 (a) has other group health care insurance coverage; or

1011 (b) receives:

1012 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social  
1013 Security Amendments of 1965; or

1014 (ii) another government health benefit.

1015 (126) "Person" includes:

1016 (a) an individual;

1017 (b) a partnership;

1018 (c) a corporation;

1019 (d) an incorporated or unincorporated association;

1020 (e) a joint stock company;

1021 (f) a trust;

1022 (g) a limited liability company;

1023 (h) a reciprocal;

- 1024 (i) a syndicate; or
- 1025 (j) another similar entity or combination of entities acting in concert.
- 1026 (127) "Personal lines insurance" means property and casualty insurance coverage sold
- 1027 for primarily noncommercial purposes to:
- 1028 (a) an individual; or
- 1029 (b) a family.
- 1030 (128) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 1031 (129) "Plan year" means:
- 1032 (a) the year that is designated as the plan year in:
- 1033 (i) the plan document of a group health plan; or
- 1034 (ii) a summary plan description of a group health plan;
- 1035 (b) if the plan document or summary plan description does not designate a plan year or
- 1036 there is no plan document or summary plan description:
- 1037 (i) the year used to determine deductibles or limits;
- 1038 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
- 1039 or
- 1040 (iii) the employer's taxable year if:
- 1041 (A) the plan does not impose deductibles or limits on a yearly basis; and
- 1042 (B) (I) the plan is not insured; or
- 1043 (II) the insurance policy is not renewed on an annual basis; or
- 1044 (c) in a case not described in Subsection (129)(a) or (b), the calendar year.
- 1045 (130) (a) "Policy" means a document, including an attached endorsement or application
- 1046 that:
- 1047 (i) purports to be an enforceable contract; and
- 1048 (ii) memorializes in writing some or all of the terms of an insurance contract.
- 1049 (b) "Policy" includes a service contract issued by:
- 1050 (i) a motor club under Chapter 11, Motor Clubs;
- 1051 (ii) a service contract provided under Chapter 6a, Service Contracts; and
- 1052 (iii) a corporation licensed under:
- 1053 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 1054 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

1055 (c) "Policy" does not include:

1056 (i) a certificate under a group insurance contract; or

1057 (ii) a document that does not purport to have legal effect.

1058 (131) "Policyholder" means a person who controls a policy, binder, or oral contract by  
1059 ownership, premium payment, or otherwise.

1060 (132) "Policy illustration" means a presentation or depiction that includes  
1061 nonguaranteed elements of a policy of life insurance over a period of years.

1062 (133) "Policy summary" means a synopsis describing the elements of a life insurance  
1063 policy.

1064 (134) "PPACA" means the Patient Protection and Affordable Care Act, Pub. L. No.  
1065 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and  
1066 related federal regulations and guidance.

1067 (135) "Preexisting condition," with respect to a health benefit plan:

1068 (a) means a condition that was present before the effective date of coverage, whether or  
1069 not medical advice, diagnosis, care, or treatment was recommended or received before that day;  
1070 and

1071 (b) does not include a condition indicated by genetic information unless an actual  
1072 diagnosis of the condition by a physician has been made.

1073 (136) (a) "Premium" means the monetary consideration for an insurance policy.

1074 (b) "Premium" includes, however designated:

1075 (i) an assessment;

1076 (ii) a membership fee;

1077 (iii) a required contribution; or

1078 (iv) monetary consideration.

1079 (c) (i) "Premium" does not include consideration paid to a third party administrator for  
1080 the third party administrator's services.

1081 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for  
1082 insurance on the risks administered by the third party administrator.

1083 (137) "Principal officers" for a corporation means the officers designated under  
1084 Subsection 31A-5-203(3).

1085 (138) "Proceeding" includes an action or special statutory proceeding.

1086 (139) "Professional liability insurance" means insurance against legal liability incident  
1087 to the practice of a profession and provision of a professional service.

1088 (140) (a) Except as provided in Subsection (140)(b), "property insurance" means  
1089 insurance against loss or damage to real or personal property of every kind and any interest in  
1090 that property:

1091 (i) from all hazards or causes; and

1092 (ii) against loss consequential upon the loss or damage including vehicle  
1093 comprehensive and vehicle physical damage coverages.

1094 (b) "Property insurance" does not include:

1095 (i) inland marine insurance; and

1096 (ii) ocean marine insurance.

1097 (141) "Qualified long-term care insurance contract" or "federally tax qualified  
1098 long-term care insurance contract" means:

1099 (a) an individual or group insurance contract that meets the requirements of Section  
1100 7702B(b), Internal Revenue Code; or

1101 (b) the portion of a life insurance contract that provides long-term care insurance:

1102 (i) (A) by rider; or

1103 (B) as a part of the contract; and

1104 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue  
1105 Code.

1106 (142) "Qualified United States financial institution" means an institution that:

1107 (a) is:

1108 (i) organized under the laws of the United States or any state; or

1109 (ii) in the case of a United States office of a foreign banking organization, licensed  
1110 under the laws of the United States or any state;

1111 (b) is regulated, supervised, and examined by a United States federal or state authority  
1112 having regulatory authority over a bank or trust company; and

1113 (c) meets the standards of financial condition and standing that are considered

1114 necessary and appropriate to regulate the quality of a financial institution whose letters of credit  
1115 will be acceptable to the commissioner as determined by:

1116 (i) the commissioner by rule; or

- 1117 (ii) the Securities Valuation Office of the National Association of Insurance  
1118 Commissioners.
- 1119 (143) (a) "Rate" means:
- 1120 (i) the cost of a given unit of insurance; or
- 1121 (ii) for property or casualty insurance, that cost of insurance per exposure unit either  
1122 expressed as:
- 1123 (A) a single number; or
- 1124 (B) a pure premium rate, adjusted before the application of individual risk variations  
1125 based on loss or expense considerations to account for the treatment of:
- 1126 (I) expenses;
- 1127 (II) profit; and
- 1128 (III) individual insurer variation in loss experience.
- 1129 (b) "Rate" does not include a minimum premium.
- 1130 (144) (a) Except as provided in Subsection (144)(b), "rate service organization" means  
1131 a person who assists an insurer in rate making or filing by:
- 1132 (i) collecting, compiling, and furnishing loss or expense statistics;
- 1133 (ii) recommending, making, or filing rates or supplementary rate information; or
- 1134 (iii) advising about rate questions, except as an attorney giving legal advice.
- 1135 (b) "Rate service organization" does not mean:
- 1136 (i) an employee of an insurer;
- 1137 (ii) a single insurer or group of insurers under common control;
- 1138 (iii) a joint underwriting group; or
- 1139 (iv) an individual serving as an actuarial or legal consultant.
- 1140 (145) "Rating manual" means any of the following used to determine initial and  
1141 renewal policy premiums:
- 1142 (a) a manual of rates;
- 1143 (b) a classification;
- 1144 (c) a rate-related underwriting rule; and
- 1145 (d) a rating formula that describes steps, policies, and procedures for determining  
1146 initial and renewal policy premiums.
- 1147 (146) (a) "Rebate" means a licensee paying, allowing, giving, or offering to pay, allow,

1148 or give, directly or indirectly:

1149 (i) a refund of premium or portion of premium;

1150 (ii) a refund of commission or portion of commission;

1151 (iii) a refund of all or a portion of a consultant fee; or

1152 (iv) providing services or other benefits not specified in an insurance or annuity

1153 contract.

1154 (b) "Rebate" does not include:

1155 (i) a refund due to termination or changes in coverage;

1156 (ii) a refund due to overcharges made in error by the licensee; or

1157 (iii) savings or wellness benefits as provided in the contract by the licensee.

1158 (147) "Received by the department" means:

1159 (a) the date delivered to and stamped received by the department, if delivered in

1160 person;

1161 (b) the post mark date, if delivered by mail;

1162 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;

1163 (d) the received date recorded on an item delivered, if delivered by:

1164 (i) facsimile;

1165 (ii) email; or

1166 (iii) another electronic method; or

1167 (e) a date specified in:

1168 (i) a statute;

1169 (ii) a rule; or

1170 (iii) an order.

1171 (148) "Reciprocal" or "interinsurance exchange" means an unincorporated association

1172 of persons:

1173 (a) operating through an attorney-in-fact common to all of the persons; and

1174 (b) exchanging insurance contracts with one another that provide insurance coverage

1175 on each other.

1176 (149) "Reinsurance" means an insurance transaction where an insurer, for

1177 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to

1178 reinsurance transactions, this title sometimes refers to:

- 1179 (a) the insurer transferring the risk as the "ceding insurer"; and  
1180 (b) the insurer assuming the risk as the:  
1181 (i) "assuming insurer"; or  
1182 (ii) "assuming reinsurer."
- 1183 (150) "Reinsurer" means a person licensed in this state as an insurer with the authority  
1184 to assume reinsurance.
- 1185 (151) "Residential dwelling liability insurance" means insurance against liability  
1186 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is  
1187 a detached single family residence or multifamily residence up to four units.
- 1188 (152) (a) "Retrocession" means reinsurance with another insurer of a liability assumed  
1189 under a reinsurance contract.
- 1190 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a  
1191 liability assumed under a reinsurance contract.
- 1192 (153) "Rider" means an endorsement to:  
1193 (a) an insurance policy; or  
1194 (b) an insurance certificate.
- 1195 [~~(156)~~] (154) "Secondary medical condition" means a complication related to an  
1196 exclusion from coverage in accident and health insurance.
- 1197 [~~(154)~~] (155) (a) "Security" means a:  
1198 (i) note;  
1199 (ii) stock;  
1200 (iii) bond;  
1201 (iv) debenture;  
1202 (v) evidence of indebtedness;  
1203 (vi) certificate of interest or participation in a profit-sharing agreement;  
1204 (vii) collateral-trust certificate;  
1205 (viii) preorganization certificate or subscription;  
1206 (ix) transferable share;  
1207 (x) investment contract;  
1208 (xi) voting trust certificate;  
1209 (xii) certificate of deposit for a security;

1210 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in  
1211 payments out of production under such a title or lease;

1212 (xiv) commodity contract or commodity option;

1213 (xv) certificate of interest or participation in, temporary or interim certificate for,  
1214 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed  
1215 in Subsections [~~(154)~~] (155)(a)(i) through (xiv); or

1216 (xvi) another interest or instrument commonly known as a security.

1217 (b) "Security" does not include:

1218 (i) any of the following under which an insurance company promises to pay money in a  
1219 specific lump sum or periodically for life or some other specified period:

1220 (A) insurance;

1221 (B) an endowment policy; or

1222 (C) an annuity contract; or

1223 (ii) a burial certificate or burial contract.

1224 [~~(155)~~] (156) "Securityholder" means a specified person who owns a security of a  
1225 person, including:

1226 (a) common stock;

1227 (b) preferred stock;

1228 (c) debt obligations; and

1229 (d) any other security convertible into or evidencing the right of any of the items listed  
1230 in this Subsection [~~(155)~~] (156).

1231 (157) (a) "Self-insurance" means an arrangement under which a person provides for  
1232 spreading its own risks by a systematic plan.

1233 (b) Except as provided in this Subsection (157), "self-insurance" does not include an  
1234 arrangement under which a number of persons spread their risks among themselves.

1235 (c) "Self-insurance" includes:

1236 (i) an arrangement by which a governmental entity undertakes to indemnify an  
1237 employee for liability arising out of the employee's employment; and

1238 (ii) an arrangement by which a person with a managed program of self-insurance and  
1239 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or  
1240 employees for liability or risk that is related to the relationship or employment.

- 1241 (d) "Self-insurance" does not include an arrangement with an independent contractor.  
1242 (158) "Sell" means to exchange a contract of insurance:  
1243 (a) by any means;  
1244 (b) for money or its equivalent; and  
1245 (c) on behalf of an insurance company.
- 1246 (159) "Short-term care insurance" means an insurance policy or rider advertised,  
1247 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,  
1248 but that provides coverage for less than 12 consecutive months for each covered person.
- 1249 (160) "Significant break in coverage" means a period of 63 consecutive days during  
1250 each of which an individual does not have creditable coverage.
- 1251 (161) (a) "Small employer" means, in connection with a health benefit plan and with  
1252 respect to a calendar year and to a plan year, an employer who:  
1253 ~~(a)~~ (i) employed at least one employee but not more than ~~[an average of]~~ 50 ~~[eligible]~~  
1254 employees on business days during the preceding calendar year; and  
1255 ~~(b)~~ (ii) employs at least one employee on the first day of the plan year.
- 1256 (b) The number of employees shall be determined using the method set forth in 26  
1257 U.S.C. Sec. 4980H(c)(2).
- 1258 (162) "Special enrollment period," in connection with a health benefit plan, has the  
1259 same meaning as provided in federal regulations adopted pursuant to the Health Insurance  
1260 Portability and Accountability Act.
- 1261 (163) (a) "Subsidiary" of a person means an affiliate controlled by that person either  
1262 directly or indirectly through one or more affiliates or intermediaries.
- 1263 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting  
1264 shares are owned by that person either alone or with its affiliates, except for the minimum  
1265 number of shares the law of the subsidiary's domicile requires to be owned by directors or  
1266 others.
- 1267 (164) Subject to Subsection (87)(b), "surety insurance" includes:  
1268 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or  
1269 perform the principal's obligations to a creditor or other obligee;  
1270 (b) bail bond insurance; and  
1271 (c) fidelity insurance.

1272 (165) (a) "Surplus" means the excess of assets over the sum of paid-in capital and  
1273 liabilities.

1274 (b) (i) "Permanent surplus" means the surplus of an insurer or organization that is  
1275 designated by the insurer or organization as permanent.

1276 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-205 require  
1277 that insurers or organizations doing business in this state maintain specified minimum levels of  
1278 permanent surplus.

1279 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the  
1280 same as the minimum required capital requirement that applies to stock insurers.

1281 (c) "Excess surplus" means:

1282 (i) for a life insurer, accident and health insurer, health organization, or property and  
1283 casualty insurer as defined in Section 31A-17-601, the lesser of:

1284 (A) that amount of an insurer's or health organization's total adjusted capital that  
1285 exceeds the product of:

1286 (I) 2.5; and

1287 (II) the sum of the insurer's or health organization's minimum capital or permanent  
1288 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1289 (B) that amount of an insurer's or health organization's total adjusted capital that  
1290 exceeds the product of:

1291 (I) 3.0; and

1292 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1293 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer  
1294 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1295 (A) 1.5; and

1296 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1297 (166) "Third party administrator" or "administrator" means a person who collects  
1298 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of  
1299 the state in connection with insurance coverage, annuities, or service insurance coverage,  
1300 except:

1301 (a) a union on behalf of its members;

1302 (b) a person administering a:

- 1303 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
1304 1974;
- 1305 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or  
1306 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
- 1307 (c) an employer on behalf of the employer's employees or the employees of one or  
1308 more of the subsidiary or affiliated corporations of the employer;
- 1309 (d) an insurer licensed under the following, but only for a line of insurance for which  
1310 the insurer holds a license in this state:
- 1311 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;  
1312 (ii) Chapter 7, Nonprofit Health Service Insurance Corporations;  
1313 (iii) Chapter 8, Health Maintenance Organizations and Limited Health Plans;  
1314 (iv) Chapter 9, Insurance Fraternal; or  
1315 (v) Chapter 14, Foreign Insurers;
- 1316 (e) a person:
- 1317 (i) licensed or exempt from licensing under:
- 1318 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and  
1319 Reinsurance Intermediaries; or  
1320 (B) Chapter 26, Insurance Adjusters; and
- 1321 (ii) whose activities are limited to those authorized under the license the person holds  
1322 or for which the person is exempt; or
- 1323 (f) an institution, bank, or financial institution:
- 1324 (i) that is:
- 1325 (A) an institution whose deposits and accounts are to any extent insured by a federal  
1326 deposit insurance agency, including the Federal Deposit Insurance Corporation or National  
1327 Credit Union Administration; or  
1328 (B) a bank or other financial institution that is subject to supervision or examination by  
1329 a federal or state banking authority; and
- 1330 (ii) that does not adjust claims without a third party administrator license.
- 1331 (167) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner  
1332 of real or personal property or the holder of liens or encumbrances on that property, or others  
1333 interested in the property against loss or damage suffered by reason of liens or encumbrances

1334 upon, defects in, or the unmarketability of the title to the property, or invalidity or  
1335 unenforceability of any liens or encumbrances on the property.

1336 (168) "Total adjusted capital" means the sum of an insurer's or health organization's  
1337 statutory capital and surplus as determined in accordance with:

1338 (a) the statutory accounting applicable to the annual financial statements required to be  
1339 filed under Section 31A-4-113; and

1340 (b) another item provided by the RBC instructions, as RBC instructions is defined in  
1341 Section 31A-17-601.

1342 (169) (a) "Trustee" means "director" when referring to the board of directors of a  
1343 corporation.

1344 (b) "Trustee," when used in reference to an employee welfare fund, means an  
1345 individual, firm, association, organization, joint stock company, or corporation, whether acting  
1346 individually or jointly and whether designated by that name or any other, that is charged with  
1347 or has the overall management of an employee welfare fund.

1348 (170) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"  
1349 means an insurer:

1350 (i) not holding a valid certificate of authority to do an insurance business in this state;

1351 or

1352 (ii) transacting business not authorized by a valid certificate.

1353 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1354 (i) holding a valid certificate of authority to do an insurance business in this state; and

1355 (ii) transacting business as authorized by a valid certificate.

1356 (171) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1357 (172) "Vehicle liability insurance" means insurance against liability resulting from or  
1358 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle  
1359 comprehensive or vehicle physical damage coverage under Subsection (140).

1360 (173) "Voting security" means a security with voting rights, and includes a security  
1361 convertible into a security with a voting right associated with the security.

1362 (174) "Waiting period" for a health benefit plan means the period that must pass before  
1363 coverage for an individual, who is otherwise eligible to enroll under the terms of the health  
1364 benefit plan, can become effective.

1365 (175) "Workers' compensation insurance" means:

1366 (a) insurance for indemnification of an employer against liability for compensation  
1367 based on:

1368 (i) a compensable accidental injury; and

1369 (ii) occupational disease disability;

1370 (b) employer's liability insurance incidental to workers' compensation insurance and  
1371 written in connection with workers' compensation insurance; and

1372 (c) insurance assuring to a person entitled to workers' compensation benefits the  
1373 compensation provided by law.

1374 Section 3. Section **31A-2-208.5** is amended to read:

1375 **31A-2-208.5. Comparison tables.**

1376 (1) (a) The commissioner shall annually publish a table comparing the rates charged by  
1377 insurers for private passenger motor vehicle and homeowners insurance in this state.

1378 (b) The comparison shall list the top 20 insurers writing the greatest volume by  
1379 premium dollar per calendar year and others requesting inclusion in the comparison.

1380 (c) The commissioner shall develop at least four hypothetical examples of risk in  
1381 preparing the comparison.

1382 (2) In conjunction with the rate comparison described in Subsection (1), the  
1383 commissioner shall publish:

1384 (a) a table listing, for each insurer compared, the ratio of [~~justified and questionable~~]  
1385 confirmed complaints received by the department to the premium dollar amount written by the  
1386 insurer; and

1387 (b) a table listing for each insurer the combined loss and expense ratio for the most  
1388 current year available.

1389 (3) The department shall make copies of the tables available to the public at minimal or  
1390 no cost.

1391 Section 4. Section **31A-2-212** is amended to read:

1392 **31A-2-212. Miscellaneous duties.**

1393 (1) Upon issuance of an order limiting, suspending, or revoking a person's authority to  
1394 do business in Utah, and when the commissioner begins a proceeding against an insurer under  
1395 Chapter 27a, Insurer Receivership Act, the commissioner:

1396 (a) shall notify by mail the producers of the person or insurer of whom the  
1397 commissioner has record; and

1398 (b) may publish notice of the order or proceeding in any manner the commissioner  
1399 considers necessary to protect the rights of the public.

1400 (2) When required for evidence in a legal proceeding, the commissioner shall furnish a  
1401 certificate of authority of a licensee to transact the business of insurance in Utah on any  
1402 particular date. The court or other officer shall receive the certificate of authority in lieu of the  
1403 commissioner's testimony.

1404 (3) (a) On the request of an insurer authorized to do a surety business, the  
1405 commissioner shall furnish a copy of the insurer's certificate of authority to a designated public  
1406 officer in this state who requires that certificate of authority before accepting a bond.

1407 (b) The public officer described in Subsection (3)(a) shall file the certificate of  
1408 authority furnished under Subsection (3)(a).

1409 (c) After a certified copy of a certificate of authority is furnished to a public officer, it  
1410 is not necessary, while the certificate of authority remains effective, to attach a copy of it to any  
1411 instrument of suretyship filed with that public officer.

1412 (d) Whenever the commissioner revokes the certificate of authority or begins a  
1413 proceeding under Chapter 27a, Insurer Receivership Act, against an insurer authorized to do a  
1414 surety business, the commissioner shall immediately give notice of that action to each public  
1415 officer who is sent a certified copy under this Subsection (3).

1416 (4) (a) The commissioner shall immediately notify every judge and clerk of the courts  
1417 of record in the state when:

1418 (i) an authorized insurer doing a surety business:

1419 (A) files a petition for receivership; or

1420 (B) is in receivership; or

1421 (ii) the commissioner has reason to believe that the authorized insurer doing surety  
1422 business:

1423 (A) is in financial difficulty; or

1424 (B) has unreasonably failed to carry out any of its contracts.

1425 (b) Upon the receipt of the notice required by this Subsection (4), it is the duty of the  
1426 judges and clerks to notify and require a person that files with the court a bond on which the

1427 authorized insurer doing surety business is surety to immediately file a new bond with a new  
1428 surety.

1429 (5) (a) The commissioner shall report to the Legislature in accordance with Section  
1430 63N-11-106 [~~prior to~~] before adopting a rule authorized by Subsection (5)(b).

1431 (b) The commissioner shall require an insurer that issues, sells, renews, or offers health  
1432 insurance coverage in this state to comply with [~~the provisions of~~] PPACA and administrative  
1433 rules adopted by the commissioner related to regulation of health benefit plans, including:

1434 (i) lifetime and annual limits;

1435 (ii) prohibition of rescissions;

1436 (iii) coverage of preventive health services;

1437 (iv) coverage for a child or dependent;

1438 (v) pre-existing condition [~~coverage for children~~] limitations;

1439 (vi) insurer transparency of consumer information including plan disclosures, uniform  
1440 coverage documents, and standard definitions;

1441 (vii) premium rate reviews;

1442 (viii) essential health benefits;

1443 (ix) provider choice;

1444 (x) waiting periods;

1445 (xi) appeals processes;

1446 (xii) rating restrictions;

1447 (xiii) uniform applications and notice provisions; [~~and~~]

1448 (xiv) certification and regulation of qualified health plans[-]; and

1449 (xv) network adequacy standards.

1450 (c) The commissioner shall preserve state control over:

1451 (i) the health insurance market in the state;

1452 (ii) qualified health plans offered in the state; and

1453 (iii) the conduct of navigators, producers, and in-person assisters operating in the state.

1454 (d) If the state enters into an agreement with the United States Department of Health  
1455 and Human Services in which the state operates health insurance plan management, the  
1456 commissioner may:

1457 (i) for fiscal year 2014, hire one temporary and two permanent full-time employees to

1458 be funded through the department's existing budget; and

1459 (ii) for fiscal year 2015, hire two permanent full-time employees funded through the  
1460 Insurance Department Restricted Account, subject to appropriations from the Legislature and  
1461 approval by the governor.

1462 Section 5. Section **31A-2-309** is amended to read:

1463 **31A-2-309. Service of process through state officer.**

1464 (1) The commissioner, or the lieutenant governor when the subject proceeding is  
1465 brought by the state, is the agent for receipt of service of a summons, notice, order, pleading, or  
1466 other legal process relating to a Utah court or administrative agency upon the following:

1467 (a) an insurer authorized to do business in this state, while authorized to do business in  
1468 this state, and thereafter in a proceeding arising from or related to a transaction having a  
1469 connection with this state;

1470 (b) a surplus lines insurer for a proceeding arising out of a contract of insurance that is  
1471 subject to the surplus lines law, or out of a certificate, cover note, or other confirmation of that  
1472 type of insurance;

1473 (c) an unauthorized insurer or other person assisting an unauthorized insurer under  
1474 Subsection 31A-15-102(1) by doing an act specified in Subsection 31A-15-102(2), for a  
1475 proceeding arising out of a transaction that is subject to the unauthorized insurance law;

1476 (d) a nonresident producer, consultant, adjuster, or third party administrator, while  
1477 authorized to do business in this state, and thereafter in a proceeding arising from or related to  
1478 a transaction having a connection with this state; and

1479 (e) a reinsurer submitting to the commissioner's jurisdiction under Subsection  
1480 31A-17-404[~~(8)~~](9).

1481 (2) The following is considered to have irrevocably appointed the commissioner and  
1482 lieutenant governor as that person's agents in accordance with Subsection (1):

1483 (a) a licensed insurer by applying for and receiving a certificate of authority;

1484 (b) a surplus lines insurer by entering into a contract subject to the surplus lines law;

1485 (c) an unauthorized insurer by doing in this state an act prohibited by Section  
1486 31A-15-103; and

1487 (d) a nonresident producer, consultant, adjuster, and third party administrator.

1488 (3) The commissioner and lieutenant governor are also agents for an executor,

1489 administrator, personal representative, receiver, trustee, or other successor in interest of a  
1490 person specified under Subsection (1).

1491 (4) A litigant serving process on the commissioner or lieutenant governor under this  
1492 section shall pay the fee applicable under Section 31A-3-103.

1493 (5) The right to substituted service under this section does not limit the right to serve a  
1494 summons, notice, order, pleading, demand, or other process upon a person in another manner  
1495 provided by law.

1496 Section 6. Section **31A-6a-101** is amended to read:

1497 **31A-6a-101. Definitions.**

1498 (1) "Mechanical breakdown insurance" means a policy, contract, or agreement issued  
1499 by an insurance company that has complied with either Chapter 5, Domestic Stock and Mutual  
1500 Insurance Corporations, or Chapter 14, Foreign Insurers, that undertakes to perform or provide  
1501 repair or replacement service on goods or property, or indemnification for repair or  
1502 replacement service, for the operational or structural failure of the goods or property due to a  
1503 defect in materials, workmanship, or normal wear and tear.

1504 (2) "Nonmanufacturers' parts" means replacement parts not made for or by the original  
1505 manufacturer of the goods commonly referred to as "after market parts."

1506 (3) (a) "Road hazard" means a hazard that is encountered while driving a motor  
1507 vehicle.

1508 (b) "Road hazard" includes potholes, rocks, wood debris, metal parts, glass, plastic,  
1509 curbs, or composite scraps.

1510 (4) (a) "Service contract" means a contract or agreement to perform or reimburse for  
1511 the repair or maintenance of goods or property, for their operational or structural failure due to  
1512 a defect in materials, workmanship, or normal wear and tear, with or without additional  
1513 provision for incidental payment of indemnity under limited circumstances.

1514 (b) "Service contract" does not include mechanical breakdown insurance.

1515 (c) "Service contract" includes any contract or agreement to perform or reimburse the  
1516 service contract holder for any one or more of the following services:

1517 (i) the repair or replacement of tires, wheels, or both on a motor vehicle damaged as a  
1518 result of coming into contact with a road hazard;

1519 (ii) the removal of dents, dings, or creases on a motor vehicle that can be repaired using

1520 the process of paintless dent removal without affecting the existing paint finish and without  
1521 replacing vehicle body panels, sanding, bonding, or painting;

1522 (iii) the repair of chips or cracks in or the replacement of a motor vehicle windshield as  
1523 a result of damage caused by a road hazard, that is primary to the coverage offered by the motor  
1524 vehicle owner's motor vehicle insurance policy; or

1525 (iv) the replacement of a motor vehicle key or key-fob if the key or key-fob becomes  
1526 inoperable, lost, or stolen, except that the replacement of lost or stolen property is limited to  
1527 only the replacement of a lost or stolen motor vehicle key or key-fob.

1528 (5) "Service contract holder" or "contract holder" means a person who purchases a  
1529 service contract.

1530 (6) "Service contract provider" means a person who issues, makes, provides,  
1531 administers, sells or offers to sell a service contract, or who is contractually obligated to  
1532 provide service under a service contract.

1533 (7) "Service contract reimbursement policy" or "reimbursement insurance policy"  
1534 means a policy of insurance providing coverage for all obligations and liabilities incurred by  
1535 the service contract provider or warrantor under the terms of the service contract or vehicle  
1536 protection product warranty issued by the provider or warrantor.

1537 (8) (a) "Vehicle protection product" means a device or system that is:

1538 (i) installed on or applied to a motor vehicle; and

1539 (ii) designed to prevent the theft of the vehicle.

1540 (b) "Vehicle protection product" includes:

1541 (i) a vehicle protection product warranty;

1542 (ii) an alarm system;

1543 (iii) a body part marking product;

1544 (iv) a steering lock;

1545 (v) a window etch product;

1546 (vi) a pedal and ignition lock;

1547 (vii) a fuel and ignition kill switch; and

1548 (viii) an electronic, radio, or satellite tracking device.

1549 (9) "Vehicle protection product warranty" means a written agreement by a warrantor  
1550 that provides if the vehicle protection product fails to prevent the theft of the motor vehicle,

1551 that the warrantor will reimburse the warranty holder under the warranty in a fixed amount  
1552 specified in the warranty, not to exceed \$5,000.

1553 (10) "Warrantor" means a person who is contractually obligated to the warranty holder  
1554 under the terms of a vehicle protection product warranty.

1555 (11) "Warranty holder" means the person who purchases a vehicle protection product,  
1556 any authorized transferee or assignee of the purchaser, or any other person legally assuming the  
1557 purchaser's rights under the vehicle protection product warranty.

1558 Section 7. Section **31A-6a-104** is amended to read:

1559 **31A-6a-104. Required disclosures.**

1560 (1) A service contract reimbursement insurance policy insuring a service contract or a  
1561 vehicle protection product warranty that is issued, sold, or offered for sale in this state shall  
1562 conspicuously state that, upon failure of the service contract provider or warrantor to perform  
1563 under the contract, the issuer of the policy shall:

1564 (a) pay on behalf of the service contract provider or warrantor any sums the service  
1565 contract provider or warrantor is legally obligated to pay according to the service contract  
1566 provider's or warrantor's contractual obligations under the service contract or a vehicle  
1567 protection product warranty issued or sold by the service contract provider or warrantor; or

1568 (b) provide the service which the service contract provider is legally obligated to  
1569 perform, according to the service contract provider's contractual obligations under the service  
1570 contract issued or sold by the service contract provider.

1571 (2) (a) A service contract may not be issued, sold, or offered for sale in this state unless  
1572 the service contract contains the following statements in substantially the following form:

1573 (i) "Obligations of the provider under this service contract are guaranteed under a  
1574 service contract reimbursement insurance policy. Should the provider fail to pay or provide  
1575 service on any claim within 60 days after proof of loss has been filed, the contract holder is  
1576 entitled to make a claim directly against the Insurance Company."; and

1577 (ii) "This service contract or warranty is subject to limited regulation by the Utah  
1578 Insurance Department. To file a complaint, contact the Utah Insurance Department."

1579 (iii) A service contract or reimbursement insurance policy may not be issued, sold, or  
1580 offered for sale in this state unless the contract contains a statement in substantially the  
1581 following form, "Coverage afforded under this contract is not guaranteed by the Property and

1582 Casualty Guaranty Association."

1583 (b) A vehicle protection product warranty may not be issued, sold, or offered for sale in  
1584 this state unless the vehicle protection product warranty contains the following statements in  
1585 substantially the following form:

1586 (i) "Obligations of the warrantor under this vehicle protection product warranty are  
1587 guaranteed under a reimbursement insurance policy. Should the warrantor fail to pay on any  
1588 claim within 60 days after proof of loss has been filed, the warranty holder is entitled to make a  
1589 claim directly against the Insurance Company."; and

1590 (ii) "This vehicle protection product warranty is subject to limited regulation by the  
1591 Utah Insurance Department. To file a complaint, contact the Utah Insurance Department."

1592 ~~[(b) A service contract or reimbursement insurance policy may not be issued, sold, or~~  
1593 ~~offered for sale in this state unless the contract contains a statement in substantially the~~  
1594 ~~following form, "Coverage afforded under this contract is not guaranteed by the Property and~~  
1595 ~~Casualty Guaranty Association."]~~

1596 (iii) A vehicle protection product warranty, or reimbursement insurance policy, may  
1597 not be issued, sold, or offered for sale in this state unless the warranty contains a statement in  
1598 substantially the following form, "Coverage afforded under this warranty is not guaranteed by  
1599 the Property and Casualty Guaranty Association."

1600 (3) A service contract and a vehicle protection product warranty shall:

1601 (a) conspicuously state the name, address, and a toll free claims service telephone  
1602 number of the reimbursement insurer;

1603 (b) (i) identify the service contract provider, the seller, and the service contract holder;  
1604 or

1605 (ii) identify the warrantor, the seller, and the warranty holder;

1606 (c) conspicuously state the total purchase price and the terms under which the service  
1607 contract or warranty is to be paid;

1608 (d) conspicuously state the existence of any deductible amount;

1609 (e) specify the merchandise, service to be provided, and any limitation, exception, or  
1610 exclusion;

1611 (f) state a term, restriction, or condition governing the transferability of the service  
1612 contract or warranty; and

1613 (g) state a term, restriction, or condition that governs cancellation of the service  
1614 contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder  
1615 or service contract provider.

1616 (4) If prior approval of repair work is required, a service contract shall conspicuously  
1617 state the procedure for obtaining prior approval and for making a claim, including:

1618 (a) a toll free telephone number for claim service; and

1619 (b) a procedure for obtaining reimbursement for emergency repairs performed outside  
1620 of normal business hours.

1621 (5) A preexisting condition clause in a service contract shall specifically state which  
1622 preexisting condition is excluded from coverage.

1623 (6) (a) Except as provided in Subsection (6)(c), a service contract shall state the  
1624 conditions upon which the use of a nonmanufacturers' part is allowed.

1625 (b) A condition described in Subsection (6)(a) shall comply with applicable state and  
1626 federal laws.

1627 (c) This Subsection (6) does not apply to a home warranty contract.

1628 (7) This section applies to a vehicle protection product warranty, except for the  
1629 requirements of ~~[Subsection]~~ Subsections (3)(d) and (g),(4), (5), and (6). The department may  
1630 make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to  
1631 implement the application of this section to a vehicle protection product warranty.

1632 (8) A vehicle protection product warranty shall contain a conspicuous statement in  
1633 substantially the following form: "Purchase of this product is optional and is not required in  
1634 order to finance, lease, or purchase a motor vehicle."

1635 Section 8. Section **31A-15-202** is amended to read:

1636 **31A-15-202. Definitions.**

1637 As used in this part:

1638 (1) ~~["Completed]~~ Notwithstanding Section 31A-1-301, "commissioner" means the  
1639 insurance commissioner of Utah or the commissioner, director, or superintendent of insurance  
1640 in another state.

1641 (2) (a) Subject to Subsection (2)(b), "completed operations liability" means liability[;  
1642 including liability for activities which are completed or abandoned before the date of the  
1643 occurrence giving rise to the liability,] arising out of the installation, maintenance, or repair of

1644 any product at a site ~~[which]~~ that is not owned or controlled by:

1645 ~~[(a)]~~ (i) any person who performs that work; or

1646 ~~[(b)]~~ (ii) any person who hires an independent contractor to perform that work.

1647 (b) "Completed operations liability" includes liability for an activity that is completed  
1648 or abandoned before the date of the occurrence giving rise to the liability.

1649 ~~[(2)]~~ (3) "Domicile," for purposes of determining the state in which a purchasing group  
1650 is domiciled, means:

1651 (a) for a corporation, the state in which the purchasing group is incorporated; and

1652 (b) for an unincorporated entity, the state of its principal place of business.

1653 ~~[(3)]~~ (4) "Hazardous financial condition" means that a risk retention group, based on its  
1654 present or reasonably anticipated financial condition, although not yet financially impaired or  
1655 insolvent, is unlikely to be able:

1656 (a) to meet obligations to policyholders with respect to known claims and reasonably  
1657 anticipated claims; or

1658 (b) to pay other obligations in the normal course of business.

1659 ~~[(4)]~~ (5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus  
1660 lines insurance, and any other arrangement for shifting and distributing risk which is  
1661 determined to be insurance under the laws of this state.

1662 ~~[(5)]~~ (6) (a) "Liability" means legal liability for damages, including costs of defense,  
1663 legal costs and fees, and other claims expenses because of injuries to other persons, damage to  
1664 their property, or other damage or loss to other persons[;] resulting from or arising out of:

1665 (i) any business, whether profit or nonprofit ~~[business]~~, trade, product, services,  
1666 including professional ~~[or other]~~ services, premises, or operations; or

1667 (ii) any activity of any state or local government or any agency or political subdivision  
1668 of any state or local government.

1669 (b) "Liability" does not include personal risk liability and an employer's liability with  
1670 respect to its employees other than legal liability under the Federal Employers' Liability Act, 45  
1671 U.S.C. Sec. 51 et seq.

1672 ~~[(6)] "NAIC" means the National Association of Insurance Commissioners.]~~

1673 (7) "Personal risk liability" means liability for damages because of injury to any person,  
1674 damage to property, or other loss or damage resulting from any personal, familial, or household

1675 responsibilities or activities, rather than from responsibilities or activities referred to in  
1676 Subsection [(5)] (6).

1677 (8) "Plan of operation" or [a] "feasibility study" means an analysis [~~which~~] that  
1678 presents the expected activities and results of a risk retention group, including at a minimum:

1679 (a) information sufficient to verify that its members are engaged in businesses or  
1680 activities similar or related with respect to the liability to which the members are exposed by  
1681 virtue of any related, similar or common business, trade, product, services, premises or  
1682 operations;

1683 (b) for each state in which it intends to operate, the coverages, deductibles, coverage  
1684 limits, rates, and rating classification systems for each line of insurance the group intends to  
1685 offer;

1686 (c) historical and expected loss experience of the proposed members and national  
1687 experience of similar exposures to the extent that this experience is reasonably available;

1688 (d) pro forma financial statements and projections;

1689 (e) appropriate opinions by a qualified, independent casualty actuary, including a  
1690 determination of minimum premium or participation levels required to commence operations  
1691 and to prevent a hazardous financial condition;

1692 (f) identification of management, underwriting and claims procedures, marketing  
1693 methods, managerial oversight methods, investment policies, and reinsurance agreements;

1694 (g) identification of each state in which the risk retention group has obtained, or sought  
1695 to obtain, a charter and license, and a description of its status in each such state; and

1696 (h) any other matters required by the commissioner of the state in which the risk  
1697 retention group is chartered for liability insurance companies authorized by the insurance laws  
1698 of that state.

1699 (9) (a) "Product liability" means liability for damages because of any personal injury,  
1700 death, emotional harm, consequential economic damage, or property damage, including  
1701 damages resulting from the loss of use of property[~~, if the liability arises~~] arising out of the  
1702 manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product.

1703 (b) "Product liability" does not include the liability of any person for those damages  
1704 described in Subsection (9)(a) if the product involved was in the possession of the person when  
1705 the incident giving rise to the claim occurred.

- 1706 (10) "Purchasing group" means any group [~~which~~] that:
- 1707 (a) has as one of its purposes the purchase of liability insurance on a group basis;
- 1708 (b) purchases liability insurance only for its group members and only to cover their
- 1709 similar or related liability exposure, as described in Subsection (10)(c);
- 1710 (c) is composed of members whose businesses or activities are similar or related with
- 1711 respect to the liability to which members are exposed by virtue of any related, similar, or
- 1712 common business, trade, products, services, premises, or operations; and
- 1713 (d) is domiciled in any state.
- 1714 (11) "Risk retention group" means any corporation or other limited liability
- 1715 association:
- 1716 (a) whose primary activity consists of assuming and spreading all, or any portion of,
- 1717 the liability exposure of its group members;
- 1718 (b) which is organized for the primary purpose of conducting the activity described
- 1719 under Subsection (11)(a);
- 1720 (c) [~~which~~] that:
- 1721 (i) is chartered and licensed as a liability insurance company and authorized to engage
- 1722 in the business of insurance under the laws of any state; or
- 1723 (ii) (A) before January 1, 1985, was chartered or licensed and authorized to engage in
- 1724 the business of insurance under the laws of Bermuda or the Cayman Islands and, before
- 1725 January 1, 1985, had certified to the insurance commissioner of at least one state that it
- 1726 satisfied the capitalization requirements of that state;
- 1727 (B) [~~however,~~] except that any [~~such~~] group as described in Subsection (11)(c)(ii)(A)
- 1728 shall be considered to be a risk retention group only if it has been engaged in business
- 1729 continuously since January 1, 1985, and only for the purpose of continuing to provide
- 1730 insurance to cover product liability or completed operations liability, as these terms were
- 1731 defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of
- 1732 the Liability Risk Retention Act of 1986;
- 1733 (d) [~~which~~] that does not exclude any person from membership in the group solely to
- 1734 provide for members of the group a competitive advantage over the excluded person;
- 1735 (e) [~~which~~] that:
- 1736 (i) has as its owners only persons who comprise the membership of the risk retention

1737 group and who are provided insurance by the group; or

1738 (ii) has as its sole owner an organization [~~which~~] that has as:

1739 (A) [~~has as~~] its members only persons who comprise the membership of the risk  
1740 retention group; and

1741 (B) [~~has as~~] its owners only persons who comprise the membership of the risk retention  
1742 group and who are provided insurance by the group;

1743 (f) whose members are engaged in businesses or activities similar or related with  
1744 respect to the liability to which the members are exposed by virtue of any related, similar, or  
1745 common business trade, products, services, premises or operations;

1746 (g) whose activities do not include providing insurance other than:

1747 (i) liability insurance for assuming and spreading all or any portion of the liability of its  
1748 group members; and

1749 (ii) reinsurance with respect to the liability of any other risk retention group, or any  
1750 members of the other group, which is engaged in businesses or activities so that the group or  
1751 member meets the requirement described in Subsection (11)(f) for membership in the risk  
1752 retention group which provides the reinsurance; and

1753 (h) the name of which includes the phrase "risk retention group."

1754 (12) "State" means:

1755 (a) a state of the United States; or

1756 (b) the District of Columbia.

1757 Section 9. Section **31A-15-203** is amended to read:

1758 **31A-15-203. Risk retention groups chartered in this state.**

1759 (1) As used in this section:

1760 (a) "Board of directors" or "board" means the governing body of the risk retention  
1761 group elected by the shareholders or members to establish policy, elect or appoint officers and  
1762 committees, and make other governing decisions.

1763 (b) "Director" means a natural person designated in the articles of the risk retention  
1764 group, or designated, elected, or appointed by any other manner, name, or title to act as a  
1765 director.

1766 ~~(1)~~ (2) (a) A risk retention group under this part shall be chartered and licensed to  
1767 write only liability insurance pursuant to this part and, except as provided elsewhere in this

1768 part, shall comply with all of the laws, rules, and requirements that apply to liability insurers  
1769 chartered and licensed in this state, and with Section 31A-15-204 to the extent the requirements  
1770 are not a limitation on other laws, rules, or requirements of this state.

1771 (b) Notwithstanding any other provision to the contrary, all risk retention groups  
1772 chartered in this state shall file with the commissioner and the National Association of  
1773 Insurance Commissioners an annual statement [~~with the department and the NAIC~~] in a form  
1774 prescribed by the commissioner[;] and [~~completed in diskette form if required by the~~  
1775 ~~commissioner;~~] completed in accordance with the statement instructions and the [~~NAIC~~]  
1776 National Association of Insurance Commissioners Accounting Practices and Procedures  
1777 Manual.

1778 [~~(2)~~] (3) Before it may offer insurance in any state, each risk retention group shall also  
1779 submit for approval to the commissioner of this state a plan of operation or feasibility study.  
1780 The risk retention group shall submit an appropriate revision of the plan or study in the event of  
1781 any subsequent material change in any item of the plan of operation or feasibility study within  
1782 10 days of any [~~such~~] change. The group may not offer any additional kinds of liability  
1783 insurance, in this state or in any other state, until any revision of the plan or study is approved  
1784 by the commissioner.

1785 [~~(3)~~] (4) (a) At the time of filing its application for charter, the risk retention group  
1786 shall provide to the commissioner in summary form the following information:

- 1787 (i) the identity of the initial members of the group;  
1788 (ii) the identity of those individuals who organized the group or who will provide  
1789 administrative services or otherwise influence or control the activities of the group;  
1790 (iii) the amount and nature of initial capitalization;  
1791 (iv) the coverages to be afforded; and  
1792 (v) the states in which the group intends to operate.

1793 (b) Upon receipt of this information, the commissioner shall forward the information to  
1794 the [~~NAIC~~] National Association of Insurance Commissioners. Providing notification to the  
1795 [~~NAIC~~] National Association of Insurance Commissioners is in addition to, and may not be  
1796 sufficient to satisfy, the requirements of Section 31A-15-204 or any other sections of this part.

1797 (5) The governance standards for risk retention groups are as follows:

1798 (a) A risk retention group that exists as of May 10, 2016, shall be in compliance with

1799 the governance standards described in this Subsection (5) by no later than May 10, 2017. A  
1800 risk retention group licensed on or after May 10, 2016, shall be in compliance with the  
1801 governance standards described in this Subsection (5) at the time of licensure.

1802 (b) The board of directors of a risk retention group shall have a majority of independent  
1803 directors. If the risk retention group is a reciprocal:

1804 (i) the attorney-in-fact is required to adhere to the same standards regarding  
1805 independence of operation and governance as imposed on the risk retention group's board of  
1806 directors and subscribers advisory committee under these standards; and

1807 (ii) to the extent permissible under state law, service providers of a reciprocal risk  
1808 retention group shall contract with the risk retention group and not the attorney-in-fact.

1809 (c) A director does not qualify as independent unless the board of directors  
1810 affirmatively determines that the director has no material relationship with the risk retention  
1811 group. Each risk retention group shall disclose these determinations to its domestic regulator,  
1812 at least annually. For this purpose, any person who is a direct or indirect owner of, or  
1813 subscriber in, the risk retention group or is an officer, director, or employee of the owner and  
1814 insured, is considered to be independent, unless some other position of the officer, director, or  
1815 employee constitutes a material relationship, as contemplated by Section 3901(a)(4)(E)(ii) of  
1816 the Liability Risk Retention Act.

1817 (d) Material relationship of a person with the risk retention group includes the  
1818 following:

1819 (i) A material relationship exists if the person receives in any one 12-month period  
1820 compensation or payment of any other item of value by the person, a member of the person's  
1821 immediate family, or a business with which the person is affiliated, from the risk retention  
1822 group or a consultant or service provider to the risk retention group is greater than the greater  
1823 of the following as measured at the end of any fiscal quarter falling in the 12-month period:

1824 (A) 5% of the risk retention group's gross written premium for the 12-month period; or

1825 (B) 2% of the risk retention group's surplus.

1826 (ii) The person or immediate family member of the person is not independent until one  
1827 year after the person's compensation from the risk retention group falls below the threshold  
1828 outlined in Subsection (5)(d)(i).

1829 (iii) A material relationship exists if a director or an immediate family member of a

1830 director is affiliated with or employed in a professional capacity by a present or former internal  
1831 or external auditor of the risk retention group.

1832 (iv) The director or immediate family member of a director described in Subsection  
1833 (5)(d)(iii) is not independent until one year after the end of the affiliation, employment, or  
1834 auditing relationship.

1835 (v) A material relationship exists if the director or immediate family member of a  
1836 director who is employed as an executive officer of another company where any of the risk  
1837 retention group's present executives serve on that other company's board of directors is not  
1838 independent until one year after the end of the service or the employment relationship.

1839 (e) (i) The term of any material service provider contract with the risk retention group  
1840 may not exceed five years. A material service provider contract, or its renewal, shall require  
1841 the approval of the majority of the risk retention group's independent directors. The service  
1842 provider contract is considered material if the amount to be paid for the contract is greater than  
1843 or equal to the greater of:

1844 (A) 5% of the risk retention group's annual gross written premium; or

1845 (B) 2% of the risk retention group's surplus.

1846 (ii) For purposes of Subsection (5)(e)(i), "service provider" includes a captive manager,  
1847 auditor, accountant, actuary, investment advisor, lawyer, managing general underwriter, or  
1848 other party responsible for underwriting, determining rates, collecting premiums, adjusting and  
1849 settling claims, or preparing financial statements. A reference to "lawyer" in this Subsection  
1850 (5)(e)(ii) does not include defense counsel retained by the risk retention group to defend  
1851 claims, unless the amount of fees paid to the lawyer is "material" as referenced in Section  
1852 (5)(e)(i).

1853 (iii) A service provider contract meeting the definition of material relationship  
1854 contained in Section (5)(d) may not be entered into unless the risk retention group has, at least  
1855 30 days before entering into the service provider contract, notified the commissioner in writing  
1856 of its intention to enter into the transaction and the commissioner has not disapproved it within  
1857 the 30-day period.

1858 (iv) The risk retention group's board of directors shall have the right to terminate any  
1859 service provider, audit contract, or actuarial contract at any time for cause after providing  
1860 adequate notice as defined in the contract.

1861 (f) The risk retention group's board of directors shall adopt a written policy in the plan  
1862 of operation as approved by the board that requires the board to:

1863 (i) assure that an owner of the risk retention group receive evidence of ownership  
1864 interest;

1865 (ii) develop a set of governance standards applicable to the risk retention group;

1866 (iii) oversee the evaluation of the risk retention group's management including the  
1867 performance of the captive manager, managing general underwriter, or one or more other  
1868 parties responsible for underwriting, determining rates, collecting premiums, adjusting or  
1869 settling claims, or preparing financial statements;

1870 (iv) review and approve the amount to be paid for all material service providers; and

1871 (v) review and approve at least annually:

1872 (A) the risk retention group's goals and objectives relevant to the compensation of  
1873 officers and service providers;

1874 (B) the officers' and service providers' performance in light of those goals and  
1875 objectives; and

1876 (C) the continued engagement of the officers and material service providers.

1877 (g) (i) A risk retention group shall have an audit committee composed of at least three  
1878 independent board members as defined in Subsection (5)(c). A non-independent board  
1879 member may participate in the activities of the audit committee, if invited by the members of  
1880 the audit committee, but cannot be a member of the audit committee.

1881 (ii) The audit committee shall have a written charter that defines the audit committee's  
1882 purpose, which, at a minimum, shall be to:

1883 (A) assist the board's oversight of the integrity of the financial statements, the  
1884 compliance with legal and regulatory requirements, and the qualifications, independence, and  
1885 performance of the independent auditor and actuary;

1886 (B) discuss the annual audited financial statements and quarterly financial statements  
1887 with management;

1888 (C) discuss the annual audited financial statements with its independent auditor and, if  
1889 advisable, discuss its quarterly financial statements with its independent auditor;

1890 (D) discuss policies with respect to risk assessment and risk management;

1891 (E) meet separately and periodically, either directly or through a designated

1892 representative of the committee, with management and the independent auditor;

1893 (F) review with the independent auditor any audit problems or difficulties and  
1894 management's response;

1895 (G) set clear hiring policies of the risk retention group as to the hiring of employees or  
1896 former employees of the independent auditor;

1897 (H) require the external auditor to rotate the lead or coordinating audit partner having  
1898 primary responsibility for the risk retention group's audit as well as the audit partner  
1899 responsible for reviewing that audit so that neither individual performs audit services for more  
1900 than five consecutive fiscal years; and

1901 (I) report regularly to the board of directors.

1902 (iii) The domestic regulator may waive the requirement to establish an audit committee  
1903 composed of independent board members if the risk retention group is able to demonstrate to  
1904 the domestic regulator that it is impracticable to do so and the risk retention group's board of  
1905 directors itself is otherwise able to accomplish the purposes of an audit committee, as described  
1906 in this Section (5)(g).

1907 (h) The board of directors shall adopt and disclose governance standards, where  
1908 "disclose" means making such information available through election, including posting the  
1909 information on the risk retention group's website or other means, and providing such  
1910 information to owners upon request, which shall include:

1911 (i) a process by which the directors are elected by the owners;

1912 (ii) director qualification standards;

1913 (iii) director responsibilities;

1914 (iv) director access to management and, as necessary and appropriate, independent  
1915 advisors;

1916 (v) director compensation;

1917 (vi) director orientation and continuing education;

1918 (vii) the policies and procedures that are followed for management succession; and

1919 (viii) the policies and procedures that are followed for annual performance evaluation  
1920 of the board.

1921 (i) The board of directors shall adopt and disclose a code of business conduct and  
1922 ethics for directors, officers, and employees and promptly disclose to the board of directors any

1923 waivers of the code for directors or executive officers, which shall include the following topics:

1924 (i) conflicts of interest;

1925 (ii) matters covered under the corporate opportunities doctrine under the state of  
1926 domicile;

1927 (iii) confidentiality;

1928 (iv) fair dealing;

1929 (v) protection and proper use of risk retention group assets;

1930 (vi) compliance with all applicable laws, rules, and regulations; and

1931 (vii) requiring the reporting of any illegal or unethical behavior that affects the  
1932 operation of the risk retention group.

1933 (j) A captive manager, president, or chief executive officer of a risk retention group  
1934 shall promptly notify the domestic regulator in writing if the captive manager, president, or  
1935 chief executive officer becomes aware of any material non-compliance with any of the  
1936 governance standards in this Subsection (5).

1937 Section 10. Section **31A-15-204** is amended to read:

1938 **31A-15-204. Risk retention groups not chartered in this state -- Designation of**  
1939 **commissioner as agent -- Compliance with unfair claims settlement practices act --**  
1940 **Deceptive, false, or fraudulent practices -- Examination regarding financial condition --**  
1941 **Prohibitions -- Penalties -- Operation prior to enactment of this part.**

1942 (1) Risk retention groups chartered and licensed in other states and seeking to do  
1943 business as a risk retention group in this state shall comply with the following:

1944 (a) Before offering insurance in this state a risk retention group shall submit to the  
1945 commissioner:

1946 (i) a statement identifying the states in which the group is chartered and licensed as a  
1947 liability insurance company, its charter date, its principal place of business, and any other  
1948 information, including information on its membership, the commissioner may require to verify  
1949 that the group is a qualified risk retention group as defined in ~~[Subsection]~~ Section  
1950 31A-15-202[~~(1)~~]; and

1951 (ii) a copy of its plan of operations or feasibility study and revisions of the plan or  
1952 study submitted to the state in which the risk retention group is chartered and licensed, except a  
1953 plan or study is not required for any line or classification of liability insurance that:

1954 (A) was defined in the Product Liability Risk Retention Act of 1981 before October 27,  
1955 1986; and

1956 (B) was offered before that date by any risk retention group that had been chartered  
1957 and operating for not less than three years before that date.

1958 (b) The risk retention group shall submit to the commissioner a copy of any revision to  
1959 its plan or study required by Subsection 31A-15-203~~(2)~~(3) at the same time it submits the  
1960 revision of its chartering state.

1961 (c) The risk retention group shall submit, on a form approved by the commissioner, a  
1962 statement of registration and a notice designating the commissioner as agent for the purpose of  
1963 receiving service of legal documents or process.

1964 (d) The risk retention group shall pay annual license fees required by Section  
1965 31A-3-103.

1966 (2) Any risk retention group doing business in this state shall submit to the  
1967 commissioner:

1968 (a) a copy of the group's financial statement submitted to the state in which the risk  
1969 retention group is chartered and licensed, which shall be certified by an independent public  
1970 accountant and shall contain a statement of opinion on loss and loss adjustment expense  
1971 reserves made by a member of the American Academy of Actuaries or a loss reserve specialist  
1972 qualified under criteria approved by the commissioner;

1973 (b) a copy of each examination of the risk retention group as certified by the  
1974 commissioner or public official conducting the examination;

1975 (c) if the commissioner requests, a copy of any information or document pertaining to  
1976 any outside audit performed with respect to the risk retention group; and

1977 (d) any other information required to verify the group's continuing qualification as a  
1978 risk retention group within the definition in [~~Subsection~~] Section 31A-15-202~~(11)~~.

1979 (3) (a) Each risk retention group shall pay premium taxes and taxes on premiums of  
1980 direct business for risks resident or located within this state, and shall report to the Utah State  
1981 Tax Commission the net premiums written for risks resident or located within this state. Each  
1982 risk retention group shall be subject to taxation, and any applicable fines and penalties related  
1983 to taxation, on the same basis as a foreign admitted insurer.

1984 (b) To the extent licensed producers are utilized pursuant to Section 31A-15-212, they

1985 shall report to the commissioner the premiums for direct business for all risks resident or  
1986 located within this state that the producers have placed with, or on behalf of, a risk retention  
1987 group not chartered in this state.

1988 (c) To the extent that insurance producers are utilized pursuant to Section 31A-15-212  
1989 they shall keep a complete and separate record of all policies procured from each risk retention  
1990 group. The record shall be open to examination by the commissioner, as provided under  
1991 Section 31A-23a-412. These records shall include the following for each policy and each kind  
1992 of insurance provided under each policy:

- 1993 (i) the limit of liability;
- 1994 (ii) the time period covered;
- 1995 (iii) the effective date;
- 1996 (iv) the name of the risk retention group that issued the policy;
- 1997 (v) the gross premium charged;
- 1998 (vi) the amount of any returned premiums; and
- 1999 (vii) additional information required by the insurance commissioner.

2000 (4) Each risk retention group and its agents and representatives shall comply with:

2001 (a) the Unfair Claims Settlement Practices Act, including Section 31A-15-207[~~-, Title~~  
2002 ~~31A,~~];

2003 (b) Chapter 26, Part 3, Claim Practices[~~;~~]; and

2004 (c) any other provision of law relating to claims settlement practices.

2005 (5) Each risk retention group shall comply with the laws of this state regarding  
2006 deceptive, false, and fraudulent acts, practices regulated under [~~Title 31A,~~] Chapter 23a, Part 4,  
2007 Marketing Practices, and any other provision of law relating to deceptive, false, or fraudulent  
2008 practices. The commissioner may only obtain an injunction regarding the conduct described in  
2009 this subsection from a court of competent jurisdiction.

2010 (6) If the commissioner of the jurisdiction in which the group is chartered and licensed  
2011 has not initiated an examination or does not initiate an examination within 60 days after a  
2012 request by the commissioner of this state, the risk retention group shall submit to an  
2013 examination by the commissioner of this state to determine its financial condition. Any  
2014 examination conducted under this subsection shall be coordinated to avoid unjustified  
2015 repetition and shall be conducted in an expeditious manner and in accordance with the

2016 [~~NAIC's~~] National Association of Insurance Commissioner's Examiner Handbook.

2017 (7) Each application form for insurance from a risk retention group and each policy and  
2018 certificate issued by a risk retention group shall contain the following notice in ten-point type  
2019 on its front and declaration pages:

2020 "NOTICE

2021 This policy is issued by your risk retention group. Your risk retention group may not be  
2022 subject to all of the insurance laws and regulations of your state. State insurance insolvency  
2023 guaranty funds are not available for your risk retention group."

2024 (8) The following acts by a risk retention group are prohibited:

2025 (a) the solicitation or sale of insurance by a risk retention group to any person who is  
2026 not eligible for membership in the group; and

2027 (b) the solicitation or sale of insurance by, or operation of, a risk retention group that is  
2028 in hazardous financial condition or financially impaired.

2029 (9) A risk retention group may not do business in this state if an insurance company is  
2030 directly or indirectly a member or owner of the risk retention group, unless all members of the  
2031 group are insurance companies.

2032 (10) The terms of any insurance policy issued by a risk retention group may not  
2033 provide, or be construed to provide, coverage prohibited generally by statute of this state or  
2034 declared unlawful by the Utah Supreme Court.

2035 (11) A risk retention group not chartered in this state and doing business in this state  
2036 shall comply with a lawful order issued in a voluntary dissolution proceeding or in a  
2037 delinquency proceeding commenced by any state's insurance commissioner if there has been a  
2038 finding of financial impairment after an examination under Subsection (6).

2039 (12) A risk retention group that violates any provision of this part is subject to fines  
2040 and penalties applicable to licensed insurers generally, including revocation of its right to do  
2041 business in this state.

2042 (13) In addition to complying with the requirements of this section, each risk retention  
2043 group operating in this state before the effective date of this part shall comply with Subsection  
2044 (1)(a) within 30 days after the effective date of this part.

2045 Section 11. Section **31A-15-206.5** is enacted to read:

2046 **31A-15-206.5. Countersignatures not required.**

2047 A policy of insurance issued to a risk retention group or any member of the risk  
2048 retention group may not be required to be countersigned.

2049 Section 12. Section **31A-15-208** is amended to read:

2050 **31A-15-208. Purchasing groups -- Notice and registration requirements.**

2051 (1) A purchasing group that intends to do business in this state shall, [~~prior to~~] before  
2052 doing business, furnish reasonable notice to the insurance commissioner in this state. The  
2053 notice shall be on forms prescribed by the National Association of Insurance Commissioners  
2054 and:

2055 (a) [~~identifying~~] identify the state in which the [~~purchasing~~] group is domiciled;

2056 (b) [~~identifying any state~~] identify the other states in which the [~~purchasing~~] group  
2057 intends to do business;

2058 (c) [~~specifying~~] specify the lines and classifications of liability insurance that the  
2059 [~~purchasing~~] group intends to purchase;

2060 (d) [~~identifying the insurers~~] identify the one or more insurance companies from which  
2061 the group intends to purchase its insurance and the domicile of the insurers;

2062 (e) [~~specifying~~] specify the method by which, and [~~any~~] the one or more persons, if  
2063 any, through whom, insurance will be offered to [group] its members whose risks are resident  
2064 or located in this state;

2065 (f) [~~identifying~~] identify the principal place of business of the [~~purchasing~~] group; and

2066 (g) [~~providing any~~] provide any other information as may be required by the  
2067 commissioner to verify that the [~~purchasing~~] group is a qualified "purchasing group," as  
2068 defined in Section 31A-15-202.

2069 (2) A purchasing group shall notify the commissioner of a change in an item listed in  
2070 Subsection (1) within 10 days of the change.

2071 (3) (a) A purchasing group shall annually register with the commissioner and pay a  
2072 filing fee.

2073 (b) A purchasing group shall designate the commissioner as its agent solely for the  
2074 purpose of receiving service of legal documents or process.

2075 (c) The registration and fee requirements of this Subsection (3) do not apply to a  
2076 purchasing group that only purchases insurance that was authorized under the Product Liability  
2077 Risk Retention Act of 1981, and that:

- 2078 (i) in any state of the United States:
- 2079 (A) was domiciled before April 1, 1986; and
- 2080 (B) is domiciled after October 27, 1986;
- 2081 (ii) (A) before October 27, 1986, purchased insurance from an insurer licensed in any
- 2082 state; and
- 2083 (B) since October 27, 1986, purchased its insurance from an insurer licensed in any
- 2084 state; or
- 2085 (iii) was a purchasing group under the requirements of the Product Liability Risk
- 2086 Retention Act of 1981 before October 27, 1986.
- 2087 (4) ~~[A]~~ Each purchasing group that is required to give notice under Subsection (1) shall
- 2088 also furnish the information required by the commissioner to:
- 2089 (a) verify that the entity qualifies as a purchasing group;
- 2090 (b) determine where the purchasing group is located; and
- 2091 (c) determine appropriate tax treatment of the purchasing group.
- 2092 Section 13. Section **31A-15-209** is amended to read:
- 2093 **31A-15-209. Restrictions on purchasing groups.**
- 2094 ~~[(1) A purchasing group which obtains liability insurance from an insurer not admitted~~
- 2095 ~~in this state or from a risk retention group shall inform each of the group members which have~~
- 2096 ~~a risk resident or located in this state that the risk is not protected by an insurance insolvency~~
- 2097 ~~guaranty fund in this state, and that the risk retention group or insurer may not be subject to all~~
- 2098 ~~insurance laws and regulations of this state.]~~
- 2099 (1) A purchasing group may not purchase insurance from a risk retention group that is
- 2100 not chartered in a state or from an insurer not admitted in the state in which the purchasing
- 2101 group is located, unless the purchase is effected through a licensed producer acting pursuant to
- 2102 the surplus lines laws and regulations of the state in which the purchasing group is located.
- 2103 (2) A purchasing group that obtains liability insurance from an insurer not admitted in
- 2104 this state or a risk retention group shall inform each of the members of the purchasing group or
- 2105 risk retention group that have a risk resident or located in this state that:
- 2106 (a) the risk is not protected by an insurance insolvency guaranty fund in this state; and
- 2107 (b) the risk retention group or insurer may not be subject to all insurance laws and
- 2108 regulations of this state.

2109           ~~[(2)]~~ (3)(a) A purchasing group may not purchase insurance providing for a deductible  
2110 or self-insured retention applicable to the group as a whole~~[-however;-]~~.

2111           (b) Notwithstanding Subsection (3)(a), coverage may provide for a deductible or  
2112 self-insured retention applicable to individual members.

2113           ~~[(3)]~~ (4) Purchases of insurance by purchasing groups are subject to the same standards  
2114 regarding aggregate limits which are applicable to all purchases of group insurance.

2115           Section 14. Section **31A-15-212** is amended to read:

2116           **31A-15-212. Duty of producers to obtain license -- Risk retention groups --**  
2117 **Purchasing groups.**

2118           (1) A person may do the following only if ~~[he]~~ the person is licensed as an insurance  
2119 ~~[agent or broker]~~ producer or is exempt from licensure under ~~[Title 31A;]~~ Chapter 23a,  
2120 Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries:

2121           (a) solicit, negotiate, or procure liability insurance in this state from a risk retention  
2122 group;

2123           (b) solicit, negotiate, or procure liability insurance in this state for a purchasing group  
2124 from an authorized insurer or a risk retention group; and

2125           (c) solicit, negotiate, or procure liability insurance coverage in this state for any  
2126 member of a purchasing group under a purchasing group's policy.

2127           ~~[(2) A person may solicit, negotiate, or procure liability insurance from an insurer not~~  
2128 ~~authorized to do business in this state on behalf of a purchasing group located in this state only~~  
2129 ~~if he is licensed as a surplus lines producer or is exempt from licensure under Title 31A,~~  
2130 ~~Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance~~  
2131 ~~Intermediaries.]~~

2132           ~~[(3) The requirement of residence in this state does not apply for purposes of acting as~~  
2133 ~~a producer for a risk retention group or purchasing group under Subsections (1) and (2).]~~

2134           ~~[(4) On business placed with a risk retention group or written through a purchasing~~  
2135 ~~group, each person licensed under this title shall provide to each prospective insured the notice~~  
2136 ~~required by Subsection 31A-15-204(7) in the case of a risk retention group, and by Subsection~~  
2137 ~~31A-15-209(1) in the case of a purchasing group.]~~

2138           ~~[(5) Solicitation for membership in a purchasing group is not of itself a solicitation for~~  
2139 ~~insurance.]~~

2140           (2) (a) A person may not act or aid in any manner in soliciting, negotiating, or  
2141 procuring liability insurance in this state for a purchasing group from an authorized insurer or a  
2142 risk retention group chartered in a state unless that person is licensed as an insurance producer,  
2143 or is exempt from licensure under Chapter 23a, Insurance Marketing - Licensing Producers,  
2144 Consultants, and Reinsurance Intermediaries.

2145           (b) A person may not act or aid in any manner in soliciting, negotiating, or procuring  
2146 liability insurance coverage in this state for any member of a purchasing group under a  
2147 purchasing group's policy unless that person is licensed as an insurance producer, or is exempt  
2148 from licensure under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants,  
2149 and Reinsurance Intermediaries.

2150           (c) A person may not act or aid in any manner in soliciting, negotiating, or procuring  
2151 liability insurance from an insurer not authorized to do business in this state on behalf of a  
2152 purchasing group located in this state unless that person is licensed as a surplus lines producer  
2153 or excess lines producer or is exempt from licensure under Chapter 23a, Insurance Marketing -  
2154 Licensing Producers, Consultants, and Reinsurance Intermediaries.

2155           (3) For purposes of acting as a producer for a risk retention group or purchasing group  
2156 pursuant to Sections (1) and (2), the requirement of residence in this state does not apply.

2157           (4) A person licensed pursuant to Chapter 23a, Insurance Marketing - Licensing  
2158 Producers, Consultants, and Reinsurance Intermediaries, on business placed with a risk  
2159 retention group or written through a purchasing group, shall inform each prospective insured of  
2160 the provisions of the notice required by Subsection 31A-15-204(7) in the case of a purchasing  
2161 group.

2162           Section 15. Section **31A-15-213.5** is enacted to read:

2163           **31A-15-213.5. Rulemaking.**

2164           In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2165 commissioner may make and from time to time amend rules relating to risk retention groups as  
2166 may be necessary or desirable to carry out this part.

2167           Section 16. Section **31A-17-404** is amended to read:

2168           **31A-17-404. Credit allowed a domestic ceding insurer against reserves for**  
2169 **reinsurance.**

2170           (1) A domestic ceding insurer is allowed credit for reinsurance as either an asset or a

2171 reduction from liability for reinsurance ceded only if the reinsurer meets the requirements of  
2172 Subsection (3), (4), (5), (6), ~~or~~ (7), or (8), subject to the following:

2173 (a) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of a  
2174 kind or class of business that the assuming insurer is licensed or otherwise permitted to write or  
2175 assume:

2176 (i) in its state of domicile; or

2177 (ii) in the case of a United States branch of an alien assuming insurer, in the state  
2178 through which it is entered and licensed to transact insurance or reinsurance.

2179 (b) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of  
2180 Subsection ~~[(8)]~~ (9) are met.

2181 (2) A domestic ceding insurer is allowed credit for reinsurance ceded:

2182 (a) only if the reinsurance is payable in a manner consistent with Section 31A-22-1201;

2183 (b) only to the extent that the accounting:

2184 (i) is consistent with the terms of the reinsurance contract; and

2185 (ii) clearly reflects:

2186 (A) the amount and nature of risk transferred; and

2187 (B) liability, including contingent liability, of the ceding insurer;

2188 (c) only to the extent the reinsurance contract shifts insurance policy risk from the  
2189 ceding insurer to the assuming reinsurer in fact and not merely in form; and

2190 (d) only if the reinsurance contract contains a provision placing on the reinsurer the  
2191 credit risk of all dealings with intermediaries regarding the reinsurance contract.

2192 (3) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an  
2193 assuming insurer that is licensed to transact insurance or reinsurance in this state.

2194 (4) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an  
2195 assuming insurer that is accredited by the commissioner as a reinsurer in this state.

2196 (b) An insurer is accredited as a reinsurer if the insurer:

2197 (i) files with the commissioner evidence of the insurer's submission to this state's  
2198 jurisdiction;

2199 (ii) submits to the commissioner's authority to examine the insurer's books and records;

2200 (iii) (A) is licensed to transact insurance or reinsurance in at least one state; or

2201 (B) in the case of a United States branch of an alien assuming insurer, is entered

2202 through and licensed to transact insurance or reinsurance in at least one state;

2203 (iv) files annually with the commissioner a copy of the insurer's:

2204 (A) annual statement filed with the insurance department of its state of domicile; and

2205 (B) most recent audited financial statement; and

2206 (v) (A) (I) has not had its accreditation denied by the commissioner within 90 days of

2207 the day on which the insurer submits the information required by this Subsection (4); and

2208 (II) maintains a surplus with regard to policyholders in an amount not less than

2209 \$20,000,000; or

2210 (B) (I) has its accreditation approved by the commissioner; and

2211 (II) maintains a surplus with regard to policyholders in an amount less than

2212 \$20,000,000.

2213 (c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's

2214 accreditation is revoked by the commissioner after a notice and hearing.

2215 (5) (a) A domestic ceding insurer is allowed a credit if:

2216 (i) the reinsurance is ceded to an assuming insurer that is:

2217 (A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or

2218 (B) in the case of a United States branch of an alien assuming insurer, is entered

2219 through a state meeting the requirements of Subsection (5)(a)(ii);

2220 (ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for

2221 reinsurance substantially similar to those applicable under this section; and

2222 (iii) the assuming insurer or United States branch of an alien assuming insurer:

2223 (A) maintains a surplus with regard to policyholders in an amount not less than

2224 \$20,000,000; and

2225 (B) submits to the authority of the commissioner to examine its books and records.

2226 (b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded

2227 and assumed pursuant to a pooling arrangement among insurers in the same holding company

2228 system.

2229 (6) (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an

2230 assuming insurer that maintains a trust fund:

2231 (i) created in accordance with rules made by the commissioner; and

2232 (ii) in a qualified United States financial institution for the payment of a valid claim of:

- 2233 (A) a United States ceding insurer of the assuming insurer;  
2234 (B) an assign of the United States ceding insurer; and  
2235 (C) a successor in interest to the United States ceding insurer.
- 2236 (b) To enable the commissioner to determine the sufficiency of the trust fund described  
2237 in Subsection (6)(a), the assuming insurer shall:
- 2238 (i) report annually to the commissioner information substantially the same as that  
2239 required to be reported on the National Association of Insurance Commissioners Annual  
2240 Statement form by a licensed insurer; and
- 2241 (ii) (A) submit to examination of its books and records by the commissioner; and  
2242 (B) pay the cost of an examination.
- 2243 (c) (i) Credit for reinsurance may not be granted under this Subsection (6) unless the  
2244 form of the trust and any amendment to the trust is approved by:
- 2245 (A) the commissioner of the state where the trust is domiciled; or  
2246 (B) the commissioner of another state who, pursuant to the terms of the trust  
2247 instrument, accepts principal regulatory oversight of the trust.
- 2248 (ii) The form of the trust and an amendment to the trust shall be filed with the  
2249 commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.
- 2250 (iii) The trust instrument shall provide that a contested claim is valid and enforceable  
2251 upon the final order of a court of competent jurisdiction in the United States.
- 2252 (iv) The trust shall vest legal title to its assets in its one or more trustees for the benefit  
2253 of:
- 2254 (A) a United States ceding insurer of the assuming insurer;  
2255 (B) an assign of the United States ceding insurer; or  
2256 (C) a successor in interest to the United States ceding insurer.
- 2257 (v) The trust and the assuming insurer are subject to examination as determined by the  
2258 commissioner.
- 2259 (vi) The trust shall remain in effect for as long as the assuming insurer has an  
2260 outstanding obligation due under a reinsurance agreement subject to the trust.
- 2261 (vii) No later than February 28 of each year, the trustee of the trust shall:
- 2262 (A) report to the commissioner in writing the balance of the trust;  
2263 (B) list the trust's investments at the end of the preceding calendar year; and

2264 (C) (I) certify the date of termination of the trust, if so planned; or  
2265 (II) certify that the trust will not expire prior to the following December 31.  
2266 (d) The following requirements apply to the following categories of assuming insurer:  
2267 (i) For a single assuming insurer:  
2268 (A) the trust fund shall consist of funds in trust in an amount not less than the assuming  
2269 insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and  
2270 (B) the assuming insurer shall maintain a trusted surplus of not less than  
2271 \$20,000,000[-], except as provided in Subsection (6)(d)(ii).  
2272 (ii) (A) At any time after the assuming insurer has permanently discontinued  
2273 underwriting new business secured by the trust for at least three full years, the commissioner  
2274 with principal regulatory oversight of the trust may authorize a reduction in the required  
2275 trusted surplus, but only after a finding, based on an assessment of the risk, that the new  
2276 required surplus level is adequate for the protection of United States ceding insurers,  
2277 policyholders, and claimants in light of reasonably foreseeable adverse loss development.  
2278 (B) The risk assessment may involve an actuarial review, including an independent  
2279 analysis of reserves and cash flows, and shall consider all material risk factors, including, when  
2280 applicable, the lines of business involved, the stability of the incurred loss estimates, and the  
2281 effect of the surplus requirements on the assuming insurer's liquidity or solvency.  
2282 (C) The minimum required trusted surplus may not be reduced to an amount less than  
2283 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States  
2284 ceding insurers covered by the trust.  
2285 ~~(ii)~~ (iii) For a group acting as assuming insurer, including incorporated and individual  
2286 unincorporated underwriters:  
2287 (A) for reinsurance ceded under a reinsurance agreement with an inception,  
2288 amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusted  
2289 account in an amount not less than the ~~group's~~ respective underwriters' several liabilities  
2290 attributable to business ceded by the one or more United States domiciled ceding insurers to [a  
2291 ~~member~~] an underwriter of the group;  
2292 (B) for reinsurance ceded under a reinsurance agreement with an inception date on or  
2293 before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the  
2294 other provisions of this chapter, the trust shall consist of a trusted account in an amount not

2295 less than the ~~[group's]~~ respective underwriters' several insurance and reinsurance liabilities  
2296 attributable to business written in the United States;

2297 (C) in addition to a trust described in Subsection (6)(d)~~(iii)~~(iii)(A) or (B), the group  
2298 shall maintain in trust a trustee surplus of which \$100,000,000 is held jointly for the benefit of  
2299 the one or more United States domiciled ceding insurers of a member of the group for all years  
2300 of account;

2301 (D) the incorporated members of the group:

2302 (I) may not be engaged in a business other than underwriting as a member of the group;  
2303 and

2304 (II) are subject to the same level of regulation and solvency control by the group's  
2305 domiciliary regulator as are the unincorporated members; and

2306 (E) within 90 days after the day on which the group's financial statements are due to be  
2307 filed with the group's domiciliary regulator, the group shall provide to the commissioner:

2308 (I) an annual certification by the group's domiciliary regulator of the solvency of each  
2309 underwriter member; or

2310 (II) if a certification is unavailable, a financial statement, prepared by an independent  
2311 public accountant, of each underwriter member of the group.

2312 ~~(iii)~~ (iv) For a group of incorporated underwriters under common administration, the  
2313 group shall:

2314 (A) have continuously transacted an insurance business outside the United States for at  
2315 least three years immediately preceding the day on which the group makes application for  
2316 accreditation;

2317 (B) maintain aggregate policyholders' surplus of at least \$10,000,000,000;

2318 (C) maintain a trust fund in an amount not less than the group's several liabilities  
2319 attributable to business ceded by the one or more United States domiciled ceding insurers to a  
2320 member of the group pursuant to a reinsurance contract issued in the name of the group;

2321 (D) in addition to complying with the other provisions of this Subsection  
2322 (6)(d)~~(iii)~~(iv), maintain a joint trustee surplus of which \$100,000,000 is held jointly for the  
2323 benefit of the one or more United States domiciled ceding insurers of a member of the group as  
2324 additional security for these liabilities; and

2325 (E) within 90 days after the day on which the group's financial statements are due to be

2326 filed with the group's domiciliary regulator, make available to the commissioner:

2327 (I) an annual certification of each underwriter member's solvency by the member's  
2328 domiciliary regulator; and

2329 (II) a financial statement of each underwriter member of the group prepared by an  
2330 independent public accountant.

2331 (7) If reinsurance is ceded to an assuming insurer not meeting the requirements of  
2332 Subsection (3), (4), (5), or (6), a domestic ceding insurer is allowed credit only as to the  
2333 insurance of a risk located in a jurisdiction where the reinsurance is required by applicable law  
2334 or regulation of that jurisdiction.

2335 (8) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an  
2336 assuming insurer that secures its obligations in accordance with this Subsection (8):

2337 (a) The insurer shall be certified by the commissioner as a reinsurer in this state.

2338 (b) To be eligible for certification, the assuming insurer shall:

2339 (i) be domiciled and licensed to transact insurance or reinsurance in a qualified  
2340 jurisdiction, as determined by the commissioner pursuant to Subsection (8)(d);

2341 (ii) maintain minimum capital and surplus, or its equivalent, in an amount to be  
2342 determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter  
2343 3, Utah Administrative Rulemaking Act;

2344 (iii) maintain financial strength ratings from two or more rating agencies considered  
2345 acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter  
2346 3, Utah Administrative Rulemaking Act;

2347 (iv) agree to:

2348 (A) submit to the jurisdiction of this state;

2349 (B) appoint the commissioner as its agent for service of process in this state;

2350 (C) provide security for 100% of the assuming insurer's liabilities attributable to  
2351 reinsurance ceded by United States ceding insurers if it resists enforcement of a final United  
2352 States judgment; and

2353 (D) agree to meet applicable information filing requirements as determined by the  
2354 commissioner including an application for certification, a renewal and on an ongoing basis; and

2355 (E) any other requirements for certification considered relevant by the commissioner.

2356 (c) An association, including incorporated and individual unincorporated underwriters,

2357 may be a certified reinsurer. To be eligible for certification, in addition to satisfying  
2358 requirements of Subsections (8)(a) and (b), the association:

2359 (i) shall satisfy its minimum capital and surplus requirements through the capital and  
2360 surplus equivalents, net of liabilities, of the association and its members, which shall include a  
2361 joint central fund that may be applied to any unsatisfied obligation of the association or any of  
2362 its members in an amount determined by the commissioner to provide adequate protection;

2363 (ii) may not have incorporated members of the association engaged in any business  
2364 other than underwriting as a member of the association;

2365 (iii) shall be subject to the same level of regulation and solvency control of the  
2366 incorporated members of the association by the association's domiciliary regulator as are the  
2367 unincorporated members; and

2368 (iv) within 90 days after its financial statements are due to be filed with the  
2369 association's domiciliary regulator provide:

2370 (A) to the commissioner an annual certification by the association's domiciliary  
2371 regulator of the solvency of each underwriter member; or

2372 (B) if a certification is unavailable, financial statements prepared by independent  
2373 public accountants, of each underwriter member of the association.

2374 (d) The commissioner shall create and publish a list of qualified jurisdictions under  
2375 which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be  
2376 considered for certification by the commissioner as a certified reinsurer.

2377 (i) To determine whether the domiciliary jurisdiction of a non-United States assuming  
2378 insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:

2379 (A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory  
2380 system of the jurisdiction, both initially and on an ongoing basis;

2381 (B) shall consider the rights, the benefits, and the extent of reciprocal recognition  
2382 afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the  
2383 United States;

2384 (C) shall require the qualified jurisdiction to share information and cooperate with the  
2385 commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and

2386 (D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has  
2387 determined that the jurisdiction does not adequately and promptly enforce final United States

2388 judgments and arbitration awards.

2389 (ii) The commissioner may consider additional factors in determining a qualified  
2390 jurisdiction.

2391 (iii) A list of qualified jurisdictions shall be published through the National  
2392 Association of Insurance Commissioners' Committee Process and the commissioner shall:

2393 (A) consider this list in determining qualified jurisdictions; and

2394 (B) if the commissioner approves a jurisdiction as qualified that does not appear on the  
2395 National Association of Insurance Commissioner's list of qualified jurisdictions, provide  
2396 thoroughly documented justification in accordance with criteria to be developed by rule made  
2397 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2398 (iv) United States jurisdictions that meet the requirement for accreditation under the  
2399 National Association of Insurance Commissioners' financial standards and accreditation  
2400 program shall be recognized as qualified jurisdictions.

2401 (v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction,  
2402 the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

2403 (e) The commissioner shall:

2404 (i) assign a rating to each certified reinsurer, giving due consideration to the financial  
2405 strength ratings that have been assigned by rating agencies considered acceptable to the  
2406 commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
2407 Rulemaking Act; and

2408 (ii) publish a list of all certified reinsurers and their ratings.

2409 (f) A certified reinsurer shall secure obligations assumed from United States ceding  
2410 insurers under this Subsection (8) at a level consistent with its rating, as specified in rules made  
2411 by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative  
2412 Rulemaking Act.

2413 (i) For a domestic ceding insurer to qualify for full financial statement credit for  
2414 reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a  
2415 form acceptable to the commissioner and consistent with Section 31A-17-404.1, or in a  
2416 multibeneficiary trust in accordance with Subsections (5), (6), and (7), except as otherwise  
2417 provided in this Subsection (8).

2418 (ii) If a certified reinsurer maintains a trust to fully secure its obligations subject to

2419 Subsections (5), (6), and (7), and chooses to secure its obligations incurred as a certified  
2420 reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate  
2421 trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a  
2422 certified reinsurer with reduced security as permitted by this Subsection (8) or comparable laws  
2423 of other United States jurisdictions and for its obligations subject to Subsection (5), (6), and  
2424 (7).

2425 (iii) It shall be a condition to the grant of certification under this Subsection (8) that the  
2426 certified reinsurer shall have bound itself, by the language of the trust and agreement with the  
2427 commissioner with principal regulatory oversight of the trust account, to fund, upon  
2428 termination of the trust account, out of the remaining surplus of the trust, any deficiency of any  
2429 other the trust account.

2430 (iv) The minimum trusteed surplus requirements provided in Subsections (5), (6), and  
2431 (7) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer  
2432 for the purpose of securing obligations incurred under this Subsection (8), except that the trust  
2433 shall maintain a minimum trusteed surplus of \$10,000,000.

2434 (v) With respect to obligations incurred by a certified reinsurer under this Subsection  
2435 (8), if the security is insufficient, the commissioner:

2436 (A) shall reduce the allowable credit by an amount proportionate to the deficiency; and

2437 (B) may impose further reductions in allowable credit upon finding that there is a  
2438 material risk that the certified reinsurer's obligations will not be paid in full when due.

2439 (vi) For purposes of this Subsection (8), a certified reinsurer whose certification has  
2440 been terminated for any reason shall be treated as a certified reinsurer required to secure 100%  
2441 of its obligations.

2442 (A) As used in this Subsection (8), the term "terminated" refers to revocation,  
2443 suspension, voluntary surrender, and inactive status.

2444 (B) If the commissioner continues to assign a higher rating as permitted by other  
2445 provisions of this section, the requirement under this Subsection (8)(f)(vi) does not apply to a  
2446 certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

2447 (g) If an applicant for certification has been certified as a reinsurer in a National  
2448 Association of Insurance Commissioners' accredited jurisdiction, the commissioner may:

2449 (i) defer to that jurisdiction's certification;

2450 (ii) defer to the rating assigned by that jurisdiction; and  
2451 (iii) consider such reinsurer to be a certified reinsurer in this state.  
2452 (h) (i) A certified reinsurer that ceases to assume new business in this state may request  
2453 to maintain its certification in inactive status in order to continue to qualify for a reduction in  
2454 security for its in-force business.  
2455 (ii) An inactive certified reinsurer shall continue to comply with all applicable  
2456 requirements of this Subsection (8).  
2457 (iii) The commissioner shall assign a rating to a reinsurer that qualifies under this  
2458 Subsection (8)(h), that takes into account, if relevant, the reasons why the reinsurer is not  
2459 assuming new business.  
2460 ~~[(8)]~~ (9) Reinsurance credit may not be allowed a domestic ceding insurer unless the  
2461 assuming insurer under the reinsurance contract submits to the jurisdiction of Utah courts by:  
2462 (a) (i) being an admitted insurer; and  
2463 (ii) submitting to jurisdiction under Section 31A-2-309;  
2464 (b) having irrevocably appointed the commissioner as the domestic ceding insurer's  
2465 agent for service of process in an action arising out of or in connection with the reinsurance,  
2466 which appointment is made under Section 31A-2-309; or  
2467 (c) agreeing in the reinsurance contract:  
2468 (i) that if the assuming insurer fails to perform its obligations under the terms of the  
2469 reinsurance contract, the assuming insurer, at the request of the ceding insurer, shall:  
2470 (A) submit to the jurisdiction of a court of competent jurisdiction in a state of the  
2471 United States;  
2472 (B) comply with all requirements necessary to give the court jurisdiction; and  
2473 (C) abide by the final decision of the court or of an appellate court in the event of an  
2474 appeal; and  
2475 (ii) to designate the commissioner or a specific attorney licensed to practice law in this  
2476 state as its attorney upon whom may be served lawful process in an action, suit, or proceeding  
2477 instituted by or on behalf of the ceding company.  
2478 ~~[(9)]~~ (10) Submitting to the jurisdiction of Utah courts under Subsection ~~[(8)]~~ (9) does  
2479 not override a duty or right of a party under the reinsurance contract, including a requirement  
2480 that the parties arbitrate their disputes.

2481           ~~[(10)]~~ (11) If an assuming insurer does not meet the requirements of Subsection (3),  
2482 (4), or (5), the credit permitted by Subsection (6) or (8) may not be allowed unless the  
2483 assuming insurer agrees in the trust instrument to the following conditions:

2484           (a) (i) Notwithstanding any other provision in the trust instrument, if an event  
2485 described in Subsection ~~[(10)]~~ (11)(a)(ii) occurs the trustee shall comply with:

2486           (A) an order of the commissioner with regulatory oversight over the trust; or

2487           (B) an order of a court of competent jurisdiction directing the trustee to transfer to the  
2488 commissioner with regulatory oversight all of the assets of the trust fund.

2489           (ii) This Subsection ~~[(10)]~~ (11)(a) applies if:

2490           (A) the trust fund is inadequate because the trust contains an amount less than the  
2491 amount required by Subsection (6)(d); or

2492           (B) the grantor of the trust is:

2493           (I) declared insolvent; or

2494           (II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the  
2495 laws of its state or country of domicile.

2496           (b) The assets of a trust fund described in Subsection ~~[(10)]~~ (11)(a) shall be distributed  
2497 by and a claim shall be filed with and valued by the commissioner with regulatory oversight in  
2498 accordance with the laws of the state in which the trust is domiciled that are applicable to the  
2499 liquidation of a domestic insurance company.

2500           (c) If the commissioner with regulatory oversight determines that the assets of the trust  
2501 fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United  
2502 States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be  
2503 returned by the commissioner with regulatory oversight to the trustee for distribution in  
2504 accordance with the trust instrument.

2505           (d) A grantor shall waive any right otherwise available to it under United States law  
2506 that is inconsistent with this Subsection ~~[(10)]~~ (11).

2507           (12) If an accredited or certified reinsurer ceases to meet the requirements for  
2508 accreditation or certification, the commissioner may suspend or revoke the reinsurer's  
2509 accreditation or certification.

2510           (a) The commissioner shall give the reinsurer notice and opportunity for hearing.

2511           (b) The suspension or revocation may not take effect until after the commissioner's

2512 order after a hearing, unless:

2513 (i) the reinsurer waives its right to hearing;

2514 (ii) the commissioner's order is based on:

2515 (A) regulatory action by the reinsurer's domiciliary jurisdiction; or

2516 (B) the voluntary surrender or termination of the reinsurer's eligibility to transact

2517 insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state

2518 under Subsection (8)(g); or

2519 (iii) the commissioner's finding that an emergency requires immediate action and a

2520 court of competent jurisdiction has not stayed the commissioner's action.

2521 (c) While a reinsurer's accreditation or certification is suspended, no reinsurance

2522 contract issued or renewed after the effective date of the suspension qualifies for credit except

2523 to the extent that the reinsurer's obligations under the contract are secured in accordance with

2524 Section 31A-17-404.1.

2525 (d) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance

2526 may be granted after the effective date of the revocation except to the extent that the reinsurer's

2527 obligations under the contract are secured in accordance with Subsection (8)(f) or Section

2528 31A-17-404.1.

2529 (13) (a) A ceding insurer shall take steps to manage its reinsurance recoverables

2530 proportionate to its own book of business.

2531 (b) (i) A domestic ceding insurer shall notify the commissioner within 30 days after

2532 reinsurance recoverables from any single assuming insurer, or group of affiliated assuming

2533 insurers:

2534 (A) exceeds 50% of the domestic ceding insurer's last reported surplus to

2535 policyholders; or

2536 (B) after it is determined that reinsurance recoverables from any single assuming

2537 insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding

2538 insurer's last reported surplus to policyholders.

2539 (ii) The notification required by Subsection (13)(b)(i) shall demonstrate that the

2540 exposure is safely managed by the domestic ceding insurer.

2541 (c) A ceding insurer shall take steps to diversify its reinsurance program.

2542 (d) (i) A domestic ceding insurer shall notify the commissioner within 30 days after

2543 ceding or being likely to cede more than 20% of the ceding insurer's gross written premium in  
2544 the prior calendar year to any:

2545 (A) single assuming insurer; or

2546 (B) group of affiliated assuming insurers.

2547 (ii) The notification shall demonstrate that the exposure is safely managed by the  
2548 domestic ceding insurer.

2549 Section 17. Section **31A-17-404.1** is amended to read:

2550 **31A-17-404.1. Asset or reduction from liability for reinsurance ceded by a**  
2551 **domestic insurer to other assuming insurers.**

2552 (1) (a) An asset or a reduction from liability for reinsurance ceded by a domestic  
2553 insurer to an assuming insurer that does not meet the requirements of Section 31A-17-404 is  
2554 allowed in an amount not exceeding the liabilities carried by the ceding insurer.

2555 (b) A reduction described in Subsection (1)(a) shall be in the amount of funds held by  
2556 or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

2557 (i) that are held:

2558 (A) under a reinsurance contract with the assuming insurer; and

2559 (B) as security for the payment of obligations under the reinsurance contract; and

2560 (ii) if the security is held:

2561 (A) in the United States subject to withdrawal solely by, and under the exclusive  
2562 control of, the ceding insurer; or

2563 (B) in the case of a trust, in a qualified United States financial institution.

2564 (2) Security described in Subsection (1) may be in the form of:

2565 (a) cash;

2566 (b) a security:

2567 (i) listed by the Securities Valuation Office of the National Association of Insurance  
2568 Commissioners, including those considered exempt from filing as defined by the Purposes and  
2569 Procedures Manual of the Securities Valuation Office; and

2570 (ii) qualifying as an admitted asset;

2571 (c) subject to Subsection (3), a clean, irrevocable, unconditional letter of credit, issued  
2572 or confirmed by a qualified United States financial institution:

2573 (i) effective no later than December 31 of the year for which the filing is being made;

2574 and

2575 (ii) in the possession of, or in trust for, the ceding [~~company~~] insurer on or before the  
2576 filing date of its annual statement; or

2577 (d) another form of security acceptable to the commissioner.

2578 (3) Notwithstanding an issuing or confirming institution's subsequent failure to meet an  
2579 applicable standard of acceptability, a letter of credit described in Subsection (2) that meets the  
2580 applicable standards of issuer acceptability as of the day on which it is issued or confirmed  
2581 shall continue to be acceptable as security until the sooner of the day on which the letter of  
2582 credit expires, is extended, is renewed, is modified, or is amended.

2583 Section 18. Section **31A-22-202** is amended to read:

2584 **31A-22-202. Protection of third-party claimants.**

2585 (1) [~~No~~] An insurance contract insuring against loss or damage through legal liability  
2586 for the bodily injury or death by accident of any person, or for damage to the property of any  
2587 person, may not be retroactively abrogated to the detriment of any third-party claimant by any  
2588 agreement between the insurer and insured after the occurrence of any injury, death, or damage  
2589 for which the insured may be liable. This attempted abrogation is void.

2590 (2) The liability of an insurer under a motor vehicle liability policy becomes absolute  
2591 when injury or damage covered by the motor vehicle liability policy occurs. The policy may  
2592 not be rescinded or canceled as to that liability to the detriment of a third party.

2593 Section 19. Section **31A-22-603** is amended to read:

2594 **31A-22-603. Persons insured under an individual accident and health policy.**

2595 A policy of individual accident and health insurance may insure only one person, except  
2596 that originally or by subsequent amendment, upon the application of an adult policyholder, a  
2597 policy may insure any two or more eligible members of the policyholder's family, including  
2598 [~~husband, wife~~] spouse, dependent children, and any other person dependent upon the  
2599 policyholder.

2600 Section 20. Section **31A-22-715** is amended to read:

2601 **31A-22-715. Alcohol and drug dependency treatment.**

2602 (1) [~~Each group accident and health insurance policy shall contain an optional rider~~  
2603 ~~allowing certificate holders to obtain~~] An insurer offering a health benefit plan providing  
2604 coverage for alcohol or drug dependency treatment [~~in programs~~] may require an inpatient

2605 facility to be licensed by:

2606 (a) (i) the Department of Human Services, under Title 62A, Chapter 2, Licensure of  
2607 Programs and Facilities~~[-, inpatient hospitals accredited by the joint commission on the~~  
2608 ~~accreditation of hospitals, or facilities licensed by]; or~~

2609 (ii) the Department of Health~~[-]; or~~

2610 (b) for an inpatient facility located outside the state, a state agency similar to one  
2611 described in Subsection (1)(a).

2612 (2) For inpatient coverage provided pursuant to Subsection (1), an insurer may require  
2613 an inpatient facility to be accredited by the following:

2614 (a) the Joint Commission; and

2615 (b) one other nationally recognized accrediting agency.

2616 Section 21. Section **31A-22-1201** is amended to read:

2617 **31A-22-1201. Assumption agreement.**

2618 (1) Subject to Subsection (2), a credit for reinsurance ceded under Section  
2619 31A-17-404~~[-]~~ or 31A-17-404.1~~[-, or 31A-17-404.2,]~~ is not allowed unless, in addition to  
2620 meeting the requirements of Section 31A-17-404~~[-]~~ or 31A-17-404.1~~[-, or 31A-17-404.2,]~~, the  
2621 reinsurance agreement provides in substance that if the ceding insurer is insolvent, the  
2622 reinsurance is payable by the assuming insurer:

2623 (a) on the basis of the liability of the ceding insurer under the contract or contracts  
2624 reinsured;

2625 (b) without diminution because of the insolvency of the ceding insurer; and

2626 (c) directly to the ceding insurer or to its domiciliary liquidator or receiver.

2627 (2) Subsection (1) applies except if:

2628 (a) a contract specifically provides another payee of the insurance in the event of the  
2629 insolvency of the ceding insurer; or

2630 (b) the assuming insurer, with the consent of the one or more direct insureds, assumes  
2631 the policy obligations of the ceding insurer:

2632 (i) as direct obligations of the assuming insurer to the payees under the policies; and

2633 (ii) in substitution for the obligations of the ceding insurer to the payees.

2634 Section 22. Section **31A-23a-111** is amended to read:

2635 **31A-23a-111. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**

2636 **terminating a license -- Rulemaking for renewal or reinstatement.**

2637 (1) A license type issued under this chapter remains in force until:

2638 (a) revoked or suspended under Subsection (5);

2639 (b) surrendered to the commissioner and accepted by the commissioner in lieu of

2640 administrative action;

2641 (c) the licensee dies or is adjudicated incompetent as defined under:

2642 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2643 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and

2644 Minors;

2645 (d) lapsed under Section 31A-23a-113; or

2646 (e) voluntarily surrendered.

2647 (2) The following may be reinstated within one year after the day on which the license

2648 is no longer in force:

2649 (a) a lapsed license; or

2650 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may

2651 not be reinstated after the license period in which the license is voluntarily surrendered.

2652 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a

2653 license, submission and acceptance of a voluntary surrender of a license does not prevent the

2654 department from pursuing additional disciplinary or other action authorized under:

2655 (a) this title; or

2656 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah

2657 Administrative Rulemaking Act.

2658 (4) A line of authority issued under this chapter remains in force until:

2659 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;

2660 or

2661 (b) the supporting license type:

2662 (i) is revoked or suspended under Subsection (5);

2663 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of

2664 administrative action;

2665 (iii) lapses under Section 31A-23a-113; or

2666 (iv) is voluntarily surrendered; or

- 2667 (c) the licensee dies or is adjudicated incompetent as defined under:  
2668 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or  
2669 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
2670 Minors.
- 2671 (5) (a) If the commissioner makes a finding under Subsection (5)(b), as part of an  
2672 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
2673 commissioner may:
- 2674 (i) revoke:  
2675 (A) a license; or  
2676 (B) a line of authority;  
2677 (ii) suspend for a specified period of 12 months or less:  
2678 (A) a license; or  
2679 (B) a line of authority;  
2680 (iii) limit in whole or in part:  
2681 (A) a license; or  
2682 (B) a line of authority; or  
2683 (iv) deny a license application.
- 2684 (b) The commissioner may take an action described in Subsection (5)(a) if the  
2685 commissioner finds that the licensee:
- 2686 (i) is unqualified for a license or line of authority under Section 31A-23a-104,  
2687 31A-23a-105, or 31A-23a-107;  
2688 (ii) violates:  
2689 (A) an insurance statute;  
2690 (B) a rule that is valid under Subsection 31A-2-201(3); or  
2691 (C) an order that is valid under Subsection 31A-2-201(4);  
2692 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other  
2693 delinquency proceedings in any state;  
2694 (iv) fails to pay a final judgment rendered against the person in this state within 60  
2695 days after the day on which the judgment became final;  
2696 (v) fails to meet the same good faith obligations in claims settlement that is required of  
2697 admitted insurers;

- 2698 (vi) is affiliated with and under the same general management or interlocking  
2699 directorate or ownership as another insurance producer that transacts business in this state  
2700 without a license;
- 2701 (vii) refuses:
- 2702 (A) to be examined; or
- 2703 (B) to produce its accounts, records, and files for examination;
- 2704 (viii) has an officer who refuses to:
- 2705 (A) give information with respect to the insurance producer's affairs; or
- 2706 (B) perform any other legal obligation as to an examination;
- 2707 (ix) provides information in the license application that is:
- 2708 (A) incorrect;
- 2709 (B) misleading;
- 2710 (C) incomplete; or
- 2711 (D) materially untrue;
- 2712 (x) violates an insurance law, valid rule, or valid order of another [~~state's insurance~~  
2713 ~~department~~] regulatory agency in any jurisdiction;
- 2714 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;
- 2715 (xii) improperly withholds, misappropriates, or converts money or properties received  
2716 in the course of doing insurance business;
- 2717 (xiii) intentionally misrepresents the terms of an actual or proposed:
- 2718 (A) insurance contract;
- 2719 (B) application for insurance; or
- 2720 (C) life settlement;
- 2721 (xiv) is convicted of a felony;
- 2722 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;
- 2723 (xvi) in the conduct of business in this state or elsewhere:
- 2724 (A) uses fraudulent, coercive, or dishonest practices; or
- 2725 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;
- 2726 (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in  
2727 another state, province, district, or territory;
- 2728 (xviii) forges another's name to:

- 2729 (A) an application for insurance; or
- 2730 (B) a document related to an insurance transaction;
- 2731 (xix) improperly uses notes or another reference material to complete an examination
- 2732 for an insurance license;
- 2733 (xx) knowingly accepts insurance business from an individual who is not licensed;
- 2734 (xxi) fails to comply with an administrative or court order imposing a child support
- 2735 obligation;
- 2736 (xxii) fails to:
- 2737 (A) pay state income tax; or
- 2738 (B) comply with an administrative or court order directing payment of state income
- 2739 tax;
- 2740 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law
- 2741 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is
- 2742 prohibited from engaging in the business of insurance; or
- 2743 (xxiv) engages in a method or practice in the conduct of business that endangers the
- 2744 legitimate interests of customers and the public.
- 2745 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 2746 and any individual designated under the license are considered to be the holders of the license.
- 2747 (d) If an individual designated under the agency license commits an act or fails to
- 2748 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
- 2749 the commissioner may suspend, revoke, or limit the license of:
- 2750 (i) the individual;
- 2751 (ii) the agency, if the agency:
- 2752 (A) is reckless or negligent in its supervision of the individual; or
- 2753 (B) knowingly participates in the act or failure to act that is the ground for suspending,
- 2754 revoking, or limiting the license; or
- 2755 (iii) (A) the individual; and
- 2756 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
- 2757 (6) A licensee under this chapter is subject to the penalties for acting as a licensee
- 2758 without a license if:
- 2759 (a) the licensee's license is:

- 2760 (i) revoked;
- 2761 (ii) suspended;
- 2762 (iii) limited;
- 2763 (iv) surrendered in lieu of administrative action;
- 2764 (v) lapsed; or
- 2765 (vi) voluntarily surrendered; and
- 2766 (b) the licensee:
- 2767 (i) continues to act as a licensee; or
- 2768 (ii) violates the terms of the license limitation.
- 2769 (7) A licensee under this chapter shall immediately report to the commissioner:
- 2770 (a) a revocation, suspension, or limitation of the person's license in another state, the
- 2771 District of Columbia, or a territory of the United States;
- 2772 (b) the imposition of a disciplinary sanction imposed on that person by another state,
- 2773 the District of Columbia, or a territory of the United States; or
- 2774 (c) a judgment or injunction entered against that person on the basis of conduct
- 2775 involving:
- 2776 (i) fraud;
- 2777 (ii) deceit;
- 2778 (iii) misrepresentation; or
- 2779 (iv) a violation of an insurance law or rule.
- 2780 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
- 2781 license in lieu of administrative action may specify a time, not to exceed five years, within
- 2782 which the former licensee may not apply for a new license.
- 2783 (b) If no time is specified in an order or agreement described in Subsection (8)(a), the
- 2784 former licensee may not apply for a new license for five years from the day on which the order
- 2785 or agreement is made without the express approval by the commissioner.
- 2786 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 2787 a license issued under this part if so ordered by a court.
- 2788 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
- 2789 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 2790 Section 23. Section **31A-23a-202** is amended to read:

2791 **31A-23a-202. Continuing education requirements.**

2792 (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing  
2793 education requirements for a producer and a consultant.

2794 (2) (a) The commissioner may not state a continuing education requirement in terms of  
2795 formal education.

2796 (b) The commissioner may state a continuing education requirement in terms of hours  
2797 of insurance-related instruction received.

2798 (c) Insurance-related formal education may be a substitute, in whole or in part, for the  
2799 hours required under Subsection (2)(b).

2800 (3) (a) The commissioner shall impose continuing education requirements in  
2801 accordance with a two-year licensing period in which the licensee meets the requirements of  
2802 this Subsection (3).

2803 (b) (i) Except as provided in this section, the continuing education requirements shall  
2804 require:

2805 (A) that a licensee complete 24 credit hours of continuing education for every two-year  
2806 licensing period;

2807 (B) that 3 of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics courses;  
2808 and

2809 (C) that the licensee complete at least half of the required hours through classroom  
2810 hours of insurance-related instruction.

2811 (ii) An hour of continuing education in accordance with Subsection (3)(b)(i) may be  
2812 obtained through:

2813 (A) classroom attendance;

2814 (B) home study;

2815 (C) watching a video recording;

2816 (D) experience credit; or

2817 (E) another method provided by rule.

2818 (iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), an individual title insurance  
2819 producer is required to complete 12 credit hours of continuing education for every two-year  
2820 licensing period, with 3 of the credit hours being ethics courses unless the individual title  
2821 insurance producer is licensed in this state as an individual title insurance producer for 20 or

2822 more consecutive years.

2823 (B) If an individual title insurance producer is licensed in this state as an individual  
2824 title insurance producer for 20 or more consecutive years, the individual title insurance  
2825 producer is required to complete 6 credit hours of continuing education for every two-year  
2826 licensing period, with 3 of the credit hours being ethics courses.

2827 (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), an individual title insurance  
2828 producer is considered to have met the continuing education requirements imposed under  
2829 Subsection (3)(b)(iii)(A) or (B) if at the time of license renewal the individual title insurance  
2830 producer:

2831 (I) provides the department evidence that the individual title insurance producer is an  
2832 active member in good standing with the Utah State Bar;

2833 (II) is in compliance with the continuing education requirements of the Utah State Bar;  
2834 and

2835 (III) if requested by the department, provides the department evidence that the  
2836 individual title insurance producer complied with the continuing education requirements of the  
2837 Utah State Bar.

2838 (c) A licensee may obtain continuing education hours at any time during the two-year  
2839 licensing period.

2840 (d) (i) A licensee is exempt from continuing education requirements under this section  
2841 if:

2842 (A) the licensee was first licensed before December 31, 1982;

2843 (B) the license does not have a continuous lapse for a period of more than one year,  
2844 except for a license for which the licensee has had an exemption approved before May 11,  
2845 2011;

2846 (C) the licensee requests an exemption from the department; and

2847 (D) the department approves the exemption.

2848 (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is  
2849 not required to apply again for the exemption.

2850 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2851 commissioner shall, by rule:

2852 (i) publish a list of insurance professional designations whose continuing education

2853 requirements can be used to meet the requirements for continuing education under Subsection  
2854 (3)(b);

2855 (ii) authorize a continuing education provider or a state or national professional  
2856 producer or consultant association to:

2857 (A) offer a qualified program for a license type or line of authority on a geographically  
2858 accessible basis; and

2859 (B) collect a reasonable fee for funding and administration of a continuing education  
2860 program, subject to the review and approval of the commissioner; and

2861 (iii) provide that membership by a producer or consultant in a state or national  
2862 professional producer or consultant association is considered a substitute for the equivalent of  
2863 two hours for each year during which the producer or consultant is a member of the  
2864 professional association, except that the commissioner may not give more than two hours of  
2865 continuing education credit in a year regardless of the number of professional associations of  
2866 which the producer or consultant is a member.

2867 (f) A fee permitted under Subsection (3)(e)(ii)(B) that is charged for attendance at a  
2868 professional producer or consultant association program may be less for an association  
2869 member, on the basis of the member's affiliation expense, but shall preserve the right of a  
2870 nonmember to attend without affiliation.

2871 (4) The commissioner shall approve a continuing education provider or continuing  
2872 education course that satisfies the requirements of this section.

2873 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
2874 commissioner shall by rule set the processes and procedures for continuing education provider  
2875 registration and course approval.

2876 (6) The requirements of this section apply only to a producer or consultant who is an  
2877 individual.

2878 (7) A nonresident producer or consultant is considered to have satisfied this state's  
2879 continuing education requirements if the nonresident producer or consultant satisfies the  
2880 nonresident producer's or consultant's home state's continuing education requirements for a  
2881 licensed insurance producer or consultant.

2882 (8) A producer or consultant subject to this section shall keep documentation of  
2883 completing the continuing education requirements of this section for two years after the end of

2884 the two-year licensing period to which the continuing education applies.

2885 Section 24. Section **31A-23a-206** is amended to read:

2886 **31A-23a-206. Special requirements for variable contracts line of authority.**

2887 (1) Before applying for a variable contracts line of authority:

2888 (a) a producer shall be licensed under Section 61-1-3 as a:

2889 (i) broker-dealer; or

2890 (ii) broker-dealer agent; and

2891 (b) a consultant shall be licensed under Section 61-1-3 as an:

2892 (i) investment adviser; or

2893 (ii) investment adviser representative.

2894 (2) A producer's or consultant's variable contracts line of authority is [~~revoked~~]

2895  canceled on the day the producer's or consultant's securities related license under Section

2896 61-1-3 is no longer [~~valid~~]  active.

2897 Section 25. Section **31A-23a-410** is amended to read:

2898 **31A-23a-410. Insurer's liability if insured pays premium to a licensee or group**  
2899 **policyholder.**

2900 (1) Subject to Subsections (2) and (5), as between the insurer and the insured, the  
2901 insurer is considered to have received the premium and is liable to the insured for losses  
2902 covered by the insurance and for any unearned premiums upon cancellation of the insurance if  
2903 an insurer, including a surplus lines insurer:

2904 (a) assumes a risk; and

2905 (b) the premium for that insurance is received by:

2906 (i) a licensee who placed the insurance;

2907 (ii) a group policyholder;

2908 (iii) an employer who deducts part or all of the premium from an employee's wages or  
2909 salary; or

2910 (iv) an employer who pays all or part of the premium for an employee.

2911 (2) Subsection (1) does not apply if:

2912 (a) the insured pays a licensee, knowing the licensee does not intend to submit the  
2913 premium to the insurer; or

2914 (b) the insured has premium withheld from the insured's wages or salary knowing the

2915 employer does not intend to submit it to the insurer.

2916 (3) (a) In the case of ~~[an employer]~~ a group policyholder who has received the premium  
2917 ~~[by deducting all or part of it from the wages or salaries of the certificate holders]~~, the insurer  
2918 may terminate its liability by giving notice of coverage termination to:

2919 (i) the certificate holders;

2920 (ii) the policyholder; and

2921 (iii) the producer, if any, for the policy.

2922 (b) The insurer may not send the notice required by Subsection (3)(a) to a certificate  
2923 holder before 20 days after the day on which premium is due and unpaid.

2924 (c) The liability of the insurer for the losses covered by the insurance terminates at the  
2925 later of:

2926 (i) the last day of the coverage period for which premium has been ~~[withheld]~~ received  
2927 by the ~~[employer]~~ group policyholder;

2928 (ii) 10 days after the date the insurer mails notice to the certificate holder that coverage  
2929 has terminated; or

2930 (iii) if the insurer fails to provide notice as required by this Subsection (3), 45 days  
2931 from the last date for which premium is received.

2932 (4) Despite ~~[an employer's]~~ a group policyholder's collection of premium under  
2933 Subsection (1), the responsibility of an insurer to continue to cover the losses covered by the  
2934 insurance to group policy certificate holders terminates upon the effective date of notice from  
2935 the policyholder that:

2936 (a) coverage of a similar kind and quality has been obtained from another insurer; or

2937 (b) the policyholder is electing to voluntarily terminate the certificate holder's coverage  
2938 and has given the ~~[employees]~~ certificate holder's notice of the termination.

2939 (5) If the insurer is obligated to pay a claim pursuant to this section, the licensee or  
2940 ~~[employer]~~ group policyholder who received the premium and failed to forward it is obligated  
2941 to the insurer for the entire unpaid premium due under the policy together with reasonable  
2942 expenses of suit and reasonable attorney fees.

2943 (6) If, under an employee health insurance plan, an employee builds up credit for future  
2944 coverage because the employee has not used the policy protection, or in some other way, the  
2945 insurer is obligated to the employee for that future coverage earned while the policy was in full

2946 effect.

2947 (7) (a) Notwithstanding that an insurer is liable for losses as provided in this section,  
2948 this section applies only to apportion the liability for the losses described in this section.

2949 (b) This section does not:

2950 (i) extend a policy or coverage beyond its date of termination; or

2951 (ii) alter or amend a provision of a policy.

2952 Section 26. Section **31A-23b-401** is amended to read:

2953 **31A-23b-401. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**  
2954 **terminating a license -- Rulemaking for renewal or reinstatement.**

2955 (1) A license as a navigator under this chapter remains in force until:

2956 (a) revoked or suspended under Subsection (4);

2957 (b) surrendered to the commissioner and accepted by the commissioner in lieu of  
2958 administrative action;

2959 (c) the licensee dies or is adjudicated incompetent as defined under:

2960 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

2961 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
2962 Minors;

2963 (d) lapsed under this section; or

2964 (e) voluntarily surrendered.

2965 (2) The following may be reinstated within one year after the day on which the license  
2966 is no longer in force:

2967 (a) a lapsed license; or

2968 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may  
2969 not be reinstated after the license period in which the license is voluntarily surrendered.

2970 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a  
2971 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
2972 department from pursuing additional disciplinary or other action authorized under:

2973 (a) this title; or

2974 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
2975 Administrative Rulemaking Act.

2976 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an

2977 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
2978 commissioner may:

- 2979 (i) revoke a license;
- 2980 (ii) suspend a license for a specified period of 12 months or less;
- 2981 (iii) limit a license in whole or in part; or
- 2982 (iv) deny a license application.

2983 (b) The commissioner may take an action described in Subsection (4)(a) if the  
2984 commissioner finds that the licensee:

- 2985 (i) is unqualified for a license under Section 31A-23b-204, 31A-23b-205, or  
2986 31A-23b-206;
- 2987 (ii) violated:
  - 2988 (A) an insurance statute;
  - 2989 (B) a rule that is valid under Subsection 31A-2-201(3); or
  - 2990 (C) an order that is valid under Subsection 31A-2-201(4);
- 2991 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other  
2992 delinquency proceedings in any state;
- 2993 (iv) failed to pay a final judgment rendered against the person in this state within 60  
2994 days after the day on which the judgment became final;
- 2995 (v) refused:
  - 2996 (A) to be examined; or
  - 2997 (B) to produce its accounts, records, and files for examination;
- 2998 (vi) had an officer who refused to:
  - 2999 (A) give information with respect to the navigator's affairs; or
  - 3000 (B) perform any other legal obligation as to an examination;
- 3001 (vii) provided information in the license application that is:
  - 3002 (A) incorrect;
  - 3003 (B) misleading;
  - 3004 (C) incomplete; or
  - 3005 (D) materially untrue;
- 3006 (viii) violated an insurance law, valid rule, or valid order of another [state's insurance  
3007 ~~department~~] regulatory agency in any jurisdiction;

- 3008 (ix) obtained or attempted to obtain a license through misrepresentation or fraud;
- 3009 (x) improperly withheld, misappropriated, or converted money or properties received
- 3010 in the course of doing insurance business;
- 3011 (xi) intentionally misrepresented the terms of an actual or proposed:
- 3012 (A) insurance contract;
- 3013 (B) application for insurance; or
- 3014 (C) application for public program;
- 3015 (xii) is convicted of a felony;
- 3016 (xiii) admitted or is found to have committed an insurance unfair trade practice or
- 3017 fraud;
- 3018 (xiv) in the conduct of business in this state or elsewhere:
- 3019 (A) used fraudulent, coercive, or dishonest practices; or
- 3020 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3021 (xv) had an insurance license, navigator license, or its equivalent, denied, suspended,
- 3022 or revoked in another state, province, district, or territory;
- 3023 (xvi) forged another's name to:
- 3024 (A) an application for insurance;
- 3025 (B) a document related to an insurance transaction;
- 3026 (C) a document related to an application for a public program; or
- 3027 (D) a document related to an application for premium subsidies;
- 3028 (xvii) improperly used notes or another reference material to complete an examination
- 3029 for a license;
- 3030 (xviii) knowingly accepted insurance business from an individual who is not licensed;
- 3031 (xix) failed to comply with an administrative or court order imposing a child support
- 3032 obligation;
- 3033 (xx) failed to:
- 3034 (A) pay state income tax; or
- 3035 (B) comply with an administrative or court order directing payment of state income
- 3036 tax;
- 3037 (xxi) violated or permitted others to violate the federal Violent Crime Control and Law
- 3038 Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is

3039 prohibited from engaging in the business of insurance; or

3040 (xxii) engaged in a method or practice in the conduct of business that endangered the  
3041 legitimate interests of customers and the public.

3042 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
3043 and any individual designated under the license are considered to be the holders of the license.

3044 (d) If an individual designated under the agency license commits an act or fails to  
3045 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
3046 the commissioner may suspend, revoke, or limit the license of:

3047 (i) the individual;

3048 (ii) the agency, if the agency:

3049 (A) is reckless or negligent in its supervision of the individual; or

3050 (B) knowingly participates in the act or failure to act that is the ground for suspending,  
3051 revoking, or limiting the license; or

3052 (iii) (A) the individual; and

3053 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

3054 (5) A licensee under this chapter is subject to the penalties for acting as a licensee  
3055 without a license if:

3056 (a) the licensee's license is:

3057 (i) revoked;

3058 (ii) suspended;

3059 (iii) surrendered in lieu of administrative action;

3060 (iv) lapsed; or

3061 (v) voluntarily surrendered; and

3062 (b) the licensee:

3063 (i) continues to act as a licensee; or

3064 (ii) violates the terms of the license limitation.

3065 (6) A licensee under this chapter shall immediately report to the commissioner:

3066 (a) a revocation, suspension, or limitation of the person's license in another state, the  
3067 District of Columbia, or a territory of the United States;

3068 (b) the imposition of a disciplinary sanction imposed on that person by another state,  
3069 the District of Columbia, or a territory of the United States; or

3070 (c) a judgment or injunction entered against that person on the basis of conduct  
3071 involving:

3072 (i) fraud;

3073 (ii) deceit;

3074 (iii) misrepresentation; or

3075 (iv) a violation of an insurance law or rule.

3076 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a  
3077 license in lieu of administrative action may specify a time, not to exceed five years, within  
3078 which the former licensee may not apply for a new license.

3079 (b) If no time is specified in an order or agreement described in Subsection (7)(a), the  
3080 former licensee may not apply for a new license for five years from the day on which the order  
3081 or agreement is made without the express approval of the commissioner.

3082 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of  
3083 a license issued under this chapter if so ordered by a court.

3084 (9) The commissioner shall by rule prescribe the license renewal and reinstatement  
3085 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3086 Section 27. Section **31A-25-208** is amended to read:

3087 **31A-25-208. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**  
3088 **terminating a license -- Rulemaking for renewal and reinstatement.**

3089 (1) A license type issued under this chapter remains in force until:

3090 (a) revoked or suspended under Subsection (4);

3091 (b) surrendered to the commissioner and accepted by the commissioner in lieu of  
3092 administrative action;

3093 (c) the licensee dies or is adjudicated incompetent as defined under:

3094 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3095 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
3096 Minors;

3097 (d) lapsed under Section 31A-25-210; or

3098 (e) voluntarily surrendered.

3099 (2) The following may be reinstated within one year after the day on which the license  
3100 is no longer in force:

- 3101 (a) a lapsed license; or
- 3102 (b) a voluntarily surrendered license, except that a voluntarily surrendered license may  
3103 not be reinstated after the license period in which the license is voluntarily surrendered.
- 3104 (3) Unless otherwise stated in a written agreement for the voluntary surrender of a  
3105 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
3106 department from pursuing additional disciplinary or other action authorized under:
- 3107 (a) this title; or
- 3108 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
3109 Administrative Rulemaking Act.
- 3110 (4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an  
3111 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
3112 commissioner may:
- 3113 (i) revoke a license;
- 3114 (ii) suspend a license for a specified period of 12 months or less;
- 3115 (iii) limit a license in whole or in part; or
- 3116 (iv) deny a license application.
- 3117 (b) The commissioner may take an action described in Subsection (4)(a) if the  
3118 commissioner finds that the licensee:
- 3119 (i) is unqualified for a license under Section 31A-25-202, 31A-25-203, or 31A-25-204;
- 3120 (ii) has violated:
- 3121 (A) an insurance statute;
- 3122 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 3123 (C) an order that is valid under Subsection 31A-2-201(4);
- 3124 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other  
3125 delinquency proceedings in any state;
- 3126 (iv) fails to pay a final judgment rendered against the person in this state within 60  
3127 days after the day on which the judgment became final;
- 3128 (v) fails to meet the same good faith obligations in claims settlement that is required of  
3129 admitted insurers;
- 3130 (vi) is affiliated with and under the same general management or interlocking  
3131 directorate or ownership as another third party administrator that transacts business in this state

- 3132 without a license;
- 3133 (vii) refuses:
- 3134 (A) to be examined; or
- 3135 (B) to produce its accounts, records, and files for examination;
- 3136 (viii) has an officer who refuses to:
- 3137 (A) give information with respect to the third party administrator's affairs; or
- 3138 (B) perform any other legal obligation as to an examination;
- 3139 (ix) provides information in the license application that is:
- 3140 (A) incorrect;
- 3141 (B) misleading;
- 3142 (C) incomplete; or
- 3143 (D) materially untrue;
- 3144 (x) has violated an insurance law, valid rule, or valid order of another [~~state's insurance~~
- 3145 ~~department~~] regulatory agency in any jurisdiction;
- 3146 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3147 (xii) has improperly withheld, misappropriated, or converted money or properties
- 3148 received in the course of doing insurance business;
- 3149 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 3150 (A) insurance contract; or
- 3151 (B) application for insurance;
- 3152 (xiv) has been convicted of a felony;
- 3153 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 3154 or fraud;
- 3155 (xvi) in the conduct of business in this state or elsewhere has:
- 3156 (A) used fraudulent, coercive, or dishonest practices; or
- 3157 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3158 (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in
- 3159 any other state, province, district, or territory;
- 3160 (xviii) has forged another's name to:
- 3161 (A) an application for insurance; or
- 3162 (B) a document related to an insurance transaction;

- 3163 (xix) has improperly used notes or any other reference material to complete an  
3164 examination for an insurance license;
- 3165 (xx) has knowingly accepted insurance business from an individual who is not  
3166 licensed;
- 3167 (xxi) has failed to comply with an administrative or court order imposing a child  
3168 support obligation;
- 3169 (xxii) has failed to:
- 3170 (A) pay state income tax; or
- 3171 (B) comply with an administrative or court order directing payment of state income  
3172 tax;
- 3173 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and  
3174 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is  
3175 prohibited from engaging in the business of insurance; or
- 3176 (xxiv) has engaged in methods and practices in the conduct of business that endanger  
3177 the legitimate interests of customers and the public.
- 3178 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
3179 and any individual designated under the license are considered to be the holders of the agency  
3180 license.
- 3181 (d) If an individual designated under the agency license commits an act or fails to  
3182 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
3183 the commissioner may suspend, revoke, or limit the license of:
- 3184 (i) the individual;
- 3185 (ii) the agency if the agency:
- 3186 (A) is reckless or negligent in its supervision of the individual; or
- 3187 (B) knowingly participated in the act or failure to act that is the ground for suspending,  
3188 revoking, or limiting the license; or
- 3189 (iii) (A) the individual; and
- 3190 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).
- 3191 (5) A licensee under this chapter is subject to the penalties for acting as a licensee  
3192 without a license if:
- 3193 (a) the licensee's license is:

- 3194 (i) revoked;
- 3195 (ii) suspended;
- 3196 (iii) limited;
- 3197 (iv) surrendered in lieu of administrative action;
- 3198 (v) lapsed; or
- 3199 (vi) voluntarily surrendered; and
- 3200 (b) the licensee:
- 3201 (i) continues to act as a licensee; or
- 3202 (ii) violates the terms of the license limitation.
- 3203 (6) A licensee under this chapter shall immediately report to the commissioner:
- 3204 (a) a revocation, suspension, or limitation of the person's license in any other state, the
- 3205 District of Columbia, or a territory of the United States;
- 3206 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
- 3207 the District of Columbia, or a territory of the United States; or
- 3208 (c) a judgment or injunction entered against the person on the basis of conduct
- 3209 involving:
- 3210 (i) fraud;
- 3211 (ii) deceit;
- 3212 (iii) misrepresentation; or
- 3213 (iv) a violation of an insurance law or rule.
- 3214 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
- 3215 license in lieu of administrative action may specify a time, not to exceed five years, within
- 3216 which the former licensee may not apply for a new license.
- 3217 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the
- 3218 former licensee may not apply for a new license for five years from the day on which the order
- 3219 or agreement is made without the express approval of the commissioner.
- 3220 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 3221 a license issued under this part if so ordered by the court.
- 3222 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
- 3223 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3224 Section 28. Section **31A-26-213** is amended to read:

3225           **31A-26-213. Revoking, suspending, surrendering, lapsing, limiting, or otherwise**  
3226 **terminating a license -- Rulemaking for renewal or reinstatement.**

3227           (1) A license type issued under this chapter remains in force until:

3228           (a) revoked or suspended under Subsection (5);

3229           (b) surrendered to the commissioner and accepted by the commissioner in lieu of  
3230 administrative action;

3231           (c) the licensee dies or is adjudicated incompetent as defined under:

3232           (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

3233           (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
3234 Minors;

3235           (d) lapsed under Section 31A-26-214.5; or

3236           (e) voluntarily surrendered.

3237           (2) The following may be reinstated within one year after the day on which the license  
3238 is no longer in force:

3239           (a) a lapsed license; or

3240           (b) a voluntarily surrendered license, except that a voluntarily surrendered license may  
3241 not be reinstated after the license period in which it is voluntarily surrendered.

3242           (3) Unless otherwise stated in a written agreement for the voluntary surrender of a  
3243 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
3244 department from pursuing additional disciplinary or other action authorized under:

3245           (a) this title; or

3246           (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
3247 Administrative Rulemaking Act.

3248           (4) A license classification issued under this chapter remains in force until:

3249           (a) the qualifications pertaining to a license classification are no longer met by the  
3250 licensee; or

3251           (b) the supporting license type:

3252           (i) is revoked or suspended under Subsection (5); or

3253           (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of  
3254 administrative action.

3255           (5) (a) If the commissioner makes a finding under Subsection (5)(b) as part of an

3256 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
3257 commissioner may:

- 3258 (i) revoke:
  - 3259 (A) a license; or
  - 3260 (B) a license classification;
- 3261 (ii) suspend for a specified period of 12 months or less:
  - 3262 (A) a license; or
  - 3263 (B) a license classification;
- 3264 (iii) limit in whole or in part:
  - 3265 (A) a license; or
  - 3266 (B) a license classification; or
- 3267 (iv) deny a license application.

3268 (b) The commissioner may take an action described in Subsection (5)(a) if the  
3269 commissioner finds that the licensee:

- 3270 (i) is unqualified for a license or license classification under Section 31A-26-202,  
3271 31A-26-203, 31A-26-204, or 31A-26-205;
- 3272 (ii) has violated:
  - 3273 (A) an insurance statute;
  - 3274 (B) a rule that is valid under Subsection 31A-2-201(3); or
  - 3275 (C) an order that is valid under Subsection 31A-2-201(4);
- 3276 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other  
3277 delinquency proceedings in any state;
- 3278 (iv) fails to pay a final judgment rendered against the person in this state within 60  
3279 days after the judgment became final;
- 3280 (v) fails to meet the same good faith obligations in claims settlement that is required of  
3281 admitted insurers;
- 3282 (vi) is affiliated with and under the same general management or interlocking  
3283 directorate or ownership as another insurance adjuster that transacts business in this state  
3284 without a license;
- 3285 (vii) refuses:
  - 3286 (A) to be examined; or

- 3287 (B) to produce its accounts, records, and files for examination;
- 3288 (viii) has an officer who refuses to:
- 3289 (A) give information with respect to the insurance adjuster's affairs; or
- 3290 (B) perform any other legal obligation as to an examination;
- 3291 (ix) provides information in the license application that is:
- 3292 (A) incorrect;
- 3293 (B) misleading;
- 3294 (C) incomplete; or
- 3295 (D) materially untrue;
- 3296 (x) has violated an insurance law, valid rule, or valid order of another [state's insurance
- 3297 ~~department~~] regulatory agency in any jurisdiction;
- 3298 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 3299 (xii) has improperly withheld, misappropriated, or converted money or properties
- 3300 received in the course of doing insurance business;
- 3301 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 3302 (A) insurance contract; or
- 3303 (B) application for insurance;
- 3304 (xiv) has been convicted of a felony;
- 3305 (xv) has admitted or been found to have committed an insurance unfair trade practice
- 3306 or fraud;
- 3307 (xvi) in the conduct of business in this state or elsewhere has:
- 3308 (A) used fraudulent, coercive, or dishonest practices; or
- 3309 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 3310 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
- 3311 any other state, province, district, or territory;
- 3312 (xviii) has forged another's name to:
- 3313 (A) an application for insurance; or
- 3314 (B) a document related to an insurance transaction;
- 3315 (xix) has improperly used notes or any other reference material to complete an
- 3316 examination for an insurance license;
- 3317 (xx) has knowingly accepted insurance business from an individual who is not

- 3318 licensed;
- 3319 (xxi) has failed to comply with an administrative or court order imposing a child  
3320 support obligation;
- 3321 (xxii) has failed to:
- 3322 (A) pay state income tax; or
- 3323 (B) comply with an administrative or court order directing payment of state income  
3324 tax;
- 3325 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and  
3326 Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033 and therefore under 18 U.S.C. Sec. 1033 is  
3327 prohibited from engaging in the business of insurance; or
- 3328 (xxiv) has engaged in methods and practices in the conduct of business that endanger  
3329 the legitimate interests of customers and the public.
- 3330 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
3331 and any individual designated under the license are considered to be the holders of the license.
- 3332 (d) If an individual designated under the agency license commits an act or fails to  
3333 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,  
3334 the commissioner may suspend, revoke, or limit the license of:
- 3335 (i) the individual;
- 3336 (ii) the agency, if the agency:
- 3337 (A) is reckless or negligent in its supervision of the individual; or
- 3338 (B) knowingly participated in the act or failure to act that is the ground for suspending,  
3339 revoking, or limiting the license; or
- 3340 (iii) (A) the individual; and
- 3341 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
- 3342 (6) A licensee under this chapter is subject to the penalties for conducting an insurance  
3343 business without a license if:
- 3344 (a) the licensee's license is:
- 3345 (i) revoked;
- 3346 (ii) suspended;
- 3347 (iii) limited;
- 3348 (iv) surrendered in lieu of administrative action;

- 3349 (v) lapsed; or
- 3350 (vi) voluntarily surrendered; and
- 3351 (b) the licensee:
- 3352 (i) continues to act as a licensee; or
- 3353 (ii) violates the terms of the license limitation.
- 3354 (7) A licensee under this chapter shall immediately report to the commissioner:
- 3355 (a) a revocation, suspension, or limitation of the person's license in any other state, the
- 3356 District of Columbia, or a territory of the United States;
- 3357 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
- 3358 the District of Columbia, or a territory of the United States; or
- 3359 (c) a judgment or injunction entered against that person on the basis of conduct
- 3360 involving:
- 3361 (i) fraud;
- 3362 (ii) deceit;
- 3363 (iii) misrepresentation; or
- 3364 (iv) a violation of an insurance law or rule.
- 3365 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
- 3366 license in lieu of administrative action may specify a time not to exceed five years within
- 3367 which the former licensee may not apply for a new license.
- 3368 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
- 3369 former licensee may not apply for a new license for five years without the express approval of
- 3370 the commissioner.
- 3371 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
- 3372 a license issued under this part if so ordered by a court.
- 3373 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
- 3374 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3375 Section 29. Section **31A-27a-605** is amended to read:
- 3376 **31A-27a-605. Allowance of contingent and unliquidated claims.**
- 3377 (1) As used in this section, "claim" means a demand for payment pursuant to Section
- 3378 31A-27a-601 under the terms and conditions of a contract issued by the insurer as a result of a
- 3379 known accident, casualty, disaster, loss, event, or occurrence.

3380 (2) (a) A claim of an insured or third party may be allowed under Section  
3381 31A-27a-603, regardless of the fact that it is contingent or unliquidated if:

3382 (i) any contingency is removed in accordance with Subsection (3); and  
3383 (ii) the value of the claim is determined in accordance with Subsection (4).

3384 (b) A claim is contingent if:

3385 (i) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or  
3386 bonded against occurs on or before the date fixed under Section ~~[31A-27a-601]~~ 31A-27a-401;  
3387 and

3388 (ii) the act or event triggering the insurer's obligation to pay has not occurred as of ~~[the]~~  
3389 that date ~~[fixed under Section 31A-27a-401]~~.

3390 (c) A claim is unliquidated if the insurer's obligation to pay is established, but the  
3391 amount of the claim has not been determined.

3392 (3) (a) Unless the receivership court directs otherwise, a contingent claim may be  
3393 allowed if:

3394 (i) the claimant presents proof of the insurer's obligation to pay reasonably satisfactory  
3395 to the liquidator; or

3396 (ii) subject to Subsection (3)(b), the claim is based on a cause of action against an  
3397 insured of the insurer, and:

3398 (A) it may be reasonably inferred from proof presented upon the claim that the  
3399 claimant would be able to obtain a judgment; and

3400 (B) the person furnishes suitable proof.

3401 (b) A contingent claim may not be allowed under Subsection (3)(a)(ii)(B) if the  
3402 receivership court for good cause shown shall otherwise direct that no further valid claims can  
3403 be made against the insurer arising out of the cause of action other than those already  
3404 presented.

3405 (4) (a) An unliquidated claim may be allowed if its amount has been determined.

3406 (b) If the amount of an unliquidated claim filed pursuant to Section 31A-27a-601  
3407 remains undetermined, the valuation of the unliquidated claim may be made by estimate  
3408 whenever the liquidator determines that:

3409 (i) liquidation of the claim would unduly delay the administration of the liquidation  
3410 proceeding; or

3411 (ii) the administrative expense of processing and adjudicating the claim or group of  
3412 claims of a similar type would be unduly excessive when compared with the property that is  
3413 estimated to be available for distribution with respect to the claim.

3414 (c) Any estimate shall be based on an accepted method of valuing a claim with  
3415 reasonable certainty at the claim's net present value, such as an actuarial evaluation.

3416 (5) (a) Notwithstanding the other provisions of this section, a claim for the value or  
3417 breach of a life insurance policy, disability income insurance policy, long-term care insurance  
3418 policy, or annuity may not result in or serve as the basis of any liability of a reinsurer of the  
3419 insurer.

3420 (b) A reinsurer's liability to the insurer shall be determined exclusively on the basis of  
3421 its contracts of reinsurance and Section 31A-27a-513.

3422 (6) (a) The liquidator may petition the receivership court to set a date certain before  
3423 which all claims under this section shall be final.

3424 (b) In addition to the notice requirements of Section 31A-27a-107, the liquidator shall  
3425 give notice of the filing of the petition to all claimants with claims that remain contingent or  
3426 unliquidated under this section.

3427 Section 30. Section **31A-28-119** is amended to read:

3428 **31A-28-119. Prohibited advertisement of the association -- Notice to owners of**  
3429 **policies and contracts.**

3430 (1) (a) Except as provided in Subsection (1)(b), a person, including an insurer, agent, or  
3431 affiliate of an insurer may not make, publish, disseminate, circulate, or place before the public,  
3432 or cause directly or indirectly to be made, published, disseminated, circulated, or placed before  
3433 the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular,  
3434 pamphlet, letter, or poster, or over a radio station or television station, or in any other way, any  
3435 advertisement, announcement, or statement written or oral, that uses the existence of the  
3436 association for the purpose of sales, solicitation, or inducement to purchase any form of  
3437 insurance.

3438 (b) Notwithstanding Subsection (1)(a), this section does not apply to:

3439 (i) the association; or

3440 (ii) another entity that does not sell or solicit insurance.

3441 (2) (a) The association shall:

3442 (i) have a summary document describing the general purposes and current limitations  
3443 of this part that complies with Subsection (3); and

3444 (ii) submit the summary document described in Subsection (2)(a)(i) to the  
3445 commissioner for approval.

3446 (b) An insurer may not deliver a policy or contract to a policy or contract owner unless  
3447 the summary document is also delivered to the policy or contract owner before, or at the time  
3448 of, delivery of the policy or contract.

3449 (c) The summary document shall be available upon request by a policy owner.

3450 (d) The distribution, delivery, or contents or interpretation of the summary document  
3451 does not guarantee that:

3452 (i) the policy or the contract is covered in the event of the impairment or insolvency of  
3453 a member insurer; or

3454 (ii) the owner of the policy or contract is covered in the event of the impairment or  
3455 insolvency of a member insurer.

3456 (e) The summary document shall be revised by the association as amendments to this  
3457 part may require.

3458 (f) Failure to receive the summary document as required in Subsection (2)(b) does not  
3459 give the owner of a policy or contract, certificate holder, or insured any greater rights than  
3460 those stated in this part.

3461 (3) (a) The summary document described in Subsection (2) shall contain a clear and  
3462 conspicuous disclaimer on its face.

3463 (b) The commissioner shall, by rule, establish the form and content of the disclaimer  
3464 described in Subsection (3)(a), except that the disclaimer shall:

3465 (i) state the name and address of:

3466 (A) the association; and

3467 (B) the department;

3468 (ii) prominently warn a policy or contract owner that:

3469 (A) the association may not cover the policy or contract; or

3470 (B) if coverage is available, it is:

3471 (I) subject to substantial limitations and exclusions; and

3472 (II) conditioned on continued residence in the state;

3473 (iii) state the types of policies or contracts for which the association will provide  
3474 coverage;

3475 (iv) state that the insurer and its agents are prohibited by law from using the existence  
3476 of the association for the purpose of sales, solicitation, or inducement to purchase any form of  
3477 insurance;

3478 (v) state that the policy or contract owner should not rely on coverage under the  
3479 association when selecting an insurer;

3480 (vi) explain the rights available and procedures for filing a complaint to allege a  
3481 violation of this part; and

3482 (vii) provide other information as directed by the commissioner including sources for  
3483 information about the financial condition of insurers provided that the information:

3484 (A) is not proprietary; and

3485 (B) is subject to disclosure under public records laws.

3486 (4) ~~[(a) An insurer or agent may not deliver a]~~ A policy or contract described in  
3487 Subsection 31A-28-103(2)(a) and wholly excluded under Subsection 31A-28-103(2)(b)(i) from  
3488 coverage under this part ~~[unless the insurer or agent, prior to or at the time of delivery, gives~~  
3489 ~~the policy or contract holder a separate written notice that]~~ shall clearly and conspicuously  
3490 ~~[discloses]~~ disclose on the cover or face page that the policy or contract is not covered by the  
3491 association.

3492 ~~[(b) The commissioner shall by rule specify the form and content of the notice required~~  
3493 ~~by Subsection (4)(a).]~~

3494 (5) A member insurer shall retain evidence of compliance with Subsection (2) for the  
3495 later of:

3496 (a) three years; or

3497 (b) until the conclusion of the next market conduct examination by the department of  
3498 insurance where the member insurer is domiciled.

3499 Section 31. Section **31A-30-116** is amended to read:

3500 **31A-30-116. Essential health benefits.**

3501 (1) For purposes of this section, the ~~["Affordable Care Act" is as]~~ PPACA means the  
3502 same as that term is defined in Section ~~[31A-2-212]~~ 31A-1-301 and includes federal rules  
3503 related to the offering of essential health benefits.

3504 (2) The state chooses to designate its own essential health benefits rather than accept a  
3505 federal determination of the essential health benefits required to be offered in the individual  
3506 and small group market for plans renewed or offered on or after January 1, 2014.

3507 (3) (a) Subject to Subsections (3)(b) and (c), to the extent required by the [~~Affordable~~  
3508 ~~Care Act~~] PPACA, and after considering public testimony, the Legislature's Health System  
3509 Reform Task Force shall recommend to the commissioner, no later than September 1, 2012, a  
3510 benchmark plan for the state's essential health benefits based on:

3511 (i) the largest plan by enrollment in any of the three largest small employer group  
3512 insurance products in the state's small employer group market;

3513 (ii) any of the largest three state employee health benefit plans by enrollment;

3514 (iii) the largest insured commercial non-Medicaid health maintenance organization  
3515 operating in the state; or

3516 (iv) other benchmarks required or permitted by the [~~Affordable Care Act~~] PPACA.

3517 (b) Notwithstanding the provisions of Subsection 63N-11-106(2), based on the  
3518 recommendation of the task force under Subsection (3)(a), and within 30 days of the task force  
3519 recommendation, the commissioner shall adopt an emergency administrative rule that  
3520 designates the essential health benefits that shall be included in a plan offered or renewed on or  
3521 after January 1, 2014, in the small employer group and individual markets.

3522 (c) The essential health benefit plan:

3523 (i) shall not include a state mandate if the inclusion of the state mandate would require  
3524 the state to contribute to premium subsidies under the [~~Affordable Care Act~~] PPACA; and

3525 (ii) may add benefits in addition to the benefits included in a benchmark plan described  
3526 in Subsection (3)(b) if the additional benefits are mandated under the [~~Affordable Care Act~~]  
3527 PPACA.

3528 Section 32. Section **31A-30-209** is amended to read:

3529 **31A-30-209. Insurance producers and the Health Insurance Exchange.**

3530 (1) A producer may be listed on the Health Insurance Exchange as a credentialed  
3531 producer if the producer is designated as a credentialed agent for the Health Insurance  
3532 Exchange in accordance with Subsection (2).

3533 (2) A producer whose license under this title authorizes the producer to sell accident  
3534 and health insurance may be credentialed by the Health Insurance Exchange and may sell any

3535 product on the Health Insurance Exchange, if the producer:

3536 (a) is an appointed producer with:

3537 (i) all carriers that offer a plan in the defined contribution market on the Health  
3538 Insurance Exchange; and

3539 (ii) at least one carrier that offers a dental plan on the Health Insurance Exchange; and

3540 (b) completes each year the Health Insurance Exchange training [~~that includes training~~  
3541 ~~on premium assistance programs~~].

3542 (3) A carrier shall appoint a producer to sell the carrier's products in the defined  
3543 contribution arrangement market of the Health Insurance Exchange, within 30 days of the  
3544 notice required in Subsection (3)(b), if:

3545 (a) the producer is currently appointed by a majority of the carriers in the Health  
3546 Insurance Exchange to sell products either outside or inside of the Health Insurance Exchange;  
3547 and

3548 (b) the producer informs the carrier that the producer is:

3549 (i) applying to be appointed to the defined contribution arrangement market in the  
3550 Health Insurance Exchange;

3551 (ii) appointed by a majority of the carriers in the defined contribution arrangement  
3552 market in the Health Insurance Exchange;

3553 (iii) willing to complete training regarding the carrier's products offered on the defined  
3554 contribution arrangement market in the Health Insurance Exchange; and

3555 (iv) willing to sign the contracts and business associate's agreements that the carrier  
3556 requires for appointed producers in the Health Insurance Exchange.

3557 Section 33. Section **31A-31-112** is enacted to read:

3558 **31A-31-112. Insurance antifraud plan.**

3559 (1) An insurer, as defined in Section 31A-31-102, shall prepare, implement, and  
3560 maintain an insurance antifraud plan for its operations in this state.

3561 (2) The insurance antifraud plan required by Subsection (1) shall outline specific  
3562 procedures, actions, and safeguards that include how the authorized insurer or health  
3563 maintenance organization will do each of the following:

3564 (a) detect, investigate, and prevent all forms of insurance fraud, including:

3565 (i) fraud involving its employees or agents;

3566 (ii) fraud resulting from misrepresentations in the application, renewal, or rating of  
3567 insurance policies;

3568 (iii) fraudulent claims; and

3569 (iv) breach of security of its data processing systems;

3570 (b) educate employees of fraud detection and the insurance antifraud plan;

3571 (c) provide for fraud investigations, whether through the use of internal fraud  
3572 investigators or third-party contractors;

3573 (d) report a suspected fraudulent insurance act, as described in Section 31A-31-103, to  
3574 the department as required by Section 31A-31-110; and

3575 (e) pursue restitution for financial loss caused by insurance fraud.

3576 (3) The commissioner may investigate and examine the records and operations of  
3577 authorized insurers and health maintenance organizations to determine if they have  
3578 implemented and complied with the insurance antifraud plan.

3579 (4) The commissioner may:

3580 (a) direct any modification to the insurance antifraud plan necessary to comply with the  
3581 requirements of this section; and

3582 (b) require action to remedy substantial noncompliance with the insurance antifraud  
3583 plan.

3584 Section 34. Section **31A-35-404** is amended to read:

3585 **31A-35-404. Minimum financial requirements for bail bond surety company**  
3586 **license.**

3587 (1) (a) A bail bond surety company that pledges the assets of a letter of credit from a  
3588 Utah depository institution in connection with a judicial proceeding shall maintain an  
3589 irrevocable letter of credit with a minimum face value of \$300,000 assigned to the state from a  
3590 Utah depository institution.

3591 (b) Notwithstanding Subsection (1)(a), a bail bond surety company described in  
3592 Subsection (1)(a) that is licensed under this chapter as of December 31, 1999, shall maintain an  
3593 irrevocable letter of credit with a minimum face value of \$250,000 assigned to the state from a  
3594 Utah depository institution.

3595 (2) (a) A bail bond surety company that pledges personal or real property, or both, as  
3596 security for a bail bond in connection with a judicial proceeding shall maintain:

- 3597 (i) (A) a current year financial statement:  
3598 (I) reviewed by a certified public accountant; and  
3599 (II) showing a net worth of at least \$300,000, at least \$100,000 of which is in liquid  
3600 assets; or  
3601 (B) notwithstanding Subsection (2)(a)(i), if the bail bond surety company is licensed  
3602 under this chapter as of December 31, 1999, a current financial statement:  
3603 (I) reviewed by a certified public accountant; and  
3604 (II) showing a net worth of at least \$250,000, at least \$50,000 of which is in liquid  
3605 assets;  
3606 (ii) a copy of the applicant's federal and state income tax return for the preceding two  
3607 years; and  
3608 (iii) for each parcel of real property owned by the applicant and included in net worth  
3609 calculations:  
3610 (A) a title letter; and  
3611 (B) an appraisal dated not more than [~~two years prior to~~] six months before the date of  
3612 application.  
3613 (b) For purposes of this Subsection (2), only real or personal property located in Utah  
3614 may be included in the net worth of the bail bond surety company.  
3615 (3) A bail bond surety company shall maintain a qualifying power of attorney issued by  
3616 a surety insurer:  
3617 (a) if the bail bond surety company is the agent of the surety insurer; and  
3618 (b) the surety insurer:  
3619 (i) issues bail bonds;  
3620 (ii) is in good standing in its state of domicile; and  
3621 (iii) is granted a certificate to write bail bonds in Utah.  
3622 (4) The commissioner may revoke the license of a bail bond surety company that fails  
3623 to maintain the minimum financial requirements required under this section.  
3624 (5) The commissioner may set by rule the limits on the aggregate amounts of bail  
3625 bonds issued by a bail bond surety company.

3626 Section 35. Section **31A-37-102** is amended to read:

3627 **31A-37-102. Definitions.**

3628 As used in this chapter:

3629 (1) "Affiliated company" means a business entity that because of common ownership,  
3630 control, operation, or management is in the same corporate or limited liability company system  
3631 as:

3632 (a) a parent;

3633 (b) an industrial insured; or

3634 (c) a member organization.

3635 (2) "Alien captive insurance company" means an insurer:

3636 (a) formed to write insurance business for a parent or affiliate of the insurer; and

3637 (b) licensed pursuant to the laws of an alien or foreign jurisdiction that imposes  
3638 statutory or regulatory standards:

3639 (i) on a business entity transacting the business of insurance in the alien jurisdiction;

3640 and

3641 (ii) in a form acceptable to the commissioner.

3642 (3) "Association" means a legal association of two or more persons that has been in  
3643 continuous existence for at least one year if:

3644 (a) the association or its member organizations:

3645 (i) own, control, or hold with power to vote all of the outstanding voting securities of  
3646 an association captive insurance company incorporated as a stock insurer; or

3647 (ii) have complete voting control over an association captive insurance company  
3648 incorporated as a mutual insurer;

3649 (b) the association's member organizations collectively constitute all of the subscribers  
3650 of an association captive insurance company formed as a reciprocal insurer; or

3651 (c) the association or its member organizations have complete voting control over an  
3652 association captive insurance company formed as a limited liability company.

3653 (4) "Association captive insurance company" means a business entity that insures risks  
3654 of:

3655 (a) a member organization of the association;

3656 (b) an affiliate of a member organization of the association; and

3657 (c) the association.

3658 (5) "Branch business" means an insurance business transacted by a branch captive

3659 insurance company in this state.

3660 (6) "Branch captive insurance company" means an alien captive insurance company  
3661 that has a certificate of authority from the commissioner to transact the business of insurance in  
3662 this state through a [~~business unit with a principal place of business in~~] captive insurance  
3663 company that is domiciled outside of this state.

3664 (7) "Branch operation" means a business operation of a branch captive insurance  
3665 company in this state.

3666 (8) "Captive insurance company" means any of the following formed or holding a  
3667 certificate of authority under this chapter:

3668 (a) a branch captive insurance company;

3669 (b) a pure captive insurance company;

3670 (c) an association captive insurance company;

3671 (d) a sponsored captive insurance company;

3672 (e) an industrial insured captive insurance company, including an industrial insured  
3673 captive insurance company formed as a risk retention group captive in this state pursuant to the  
3674 provisions of the Federal Liability Risk Retention Act of 1986;

3675 (f) a special purpose captive insurance company; or

3676 (g) a special purpose financial captive insurance company.

3677 (9) "Commissioner" means Utah's Insurance Commissioner or the commissioner's  
3678 designee.

3679 (10) "Common ownership and control" means that two or more captive insurance  
3680 companies are owned or controlled by the same person or group of persons as follows:

3681 (a) in the case of a captive insurance company that is a stock corporation, the direct or  
3682 indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;

3683 (b) in the case of a captive insurance company that is a mutual corporation, the direct  
3684 or indirect ownership of 80% or more of the surplus and the voting power of the mutual  
3685 corporation;

3686 (c) in the case of a captive insurance company that is a limited liability company, the  
3687 direct or indirect ownership by the same member or members of 80% or more of the  
3688 membership interests in the limited liability company; or

3689 (d) in the case of a sponsored captive insurance company, a protected cell is a separate

3690 captive insurance company owned and controlled by the protected cell's participant, only if:

3691 (i) the participant is the only participant with respect to the protected cell; and

3692 (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored

3693 captive insurance company through common ownership and control.

3694 (11) "Consolidated debt to total capital ratio" means the ratio of Subsection (11)(a) to

3695 (b).

3696 (a) This Subsection (11)(a) is an amount equal to the sum of all debts and hybrid

3697 capital instruments including:

3698 (i) all borrowings from depository institutions;

3699 (ii) all senior debt;

3700 (iii) all subordinated debts;

3701 (iv) all trust preferred shares; and

3702 (v) all other hybrid capital instruments that are not included in the determination of

3703 consolidated GAAP net worth issued and outstanding.

3704 (b) This Subsection (11)(b) is an amount equal to the sum of:

3705 (i) total capital consisting of all debts and hybrid capital instruments as described in

3706 Subsection (11)(a); and

3707 (ii) shareholders' equity determined in accordance with generally accepted accounting

3708 principles for reporting to the United States Securities and Exchange Commission.

3709 (12) "Consolidated GAAP net worth" means the consolidated shareholders' or

3710 members' equity determined in accordance with generally accepted accounting principles for

3711 reporting to the United States Securities and Exchange Commission.

3712 (13) "Controlled unaffiliated business" means a business entity:

3713 (a) (i) in the case of a pure captive insurance company, that is not in the corporate or

3714 limited liability company system of a parent or the parent's affiliate; or

3715 (ii) in the case of an industrial insured captive insurance company, that is not in the

3716 corporate or limited liability company system of an industrial insured or an affiliated company

3717 of the industrial insured;

3718 (b) (i) in the case of a pure captive insurance company, that has a contractual

3719 relationship with a parent or affiliate; or

3720 (ii) in the case of an industrial insured captive insurance company, that has a

3721 contractual relationship with an industrial insured or an affiliated company of the industrial  
3722 insured; and

3723 (c) whose risks are managed by one of the following in accordance with Subsection  
3724 31A-37-106(1)(j):

3725 (i) a pure captive insurance company; or  
3726 (ii) an industrial insured captive insurance company.

3727 (14) "Department" means the Insurance Department.

3728 (15) "Industrial insured" means an insured:

3729 (a) that produces insurance:

3730 (i) by the services of a full-time employee acting as a risk manager or insurance  
3731 manager; or  
3732 (ii) using the services of a regularly and continuously qualified insurance consultant;

3733 (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000;  
3734 and

3735 (c) that has at least 25 full-time employees.

3736 (16) "Industrial insured captive insurance company" means a business entity that:

3737 (a) insures risks of the industrial insureds that comprise the industrial insured group;  
3738 and

3739 (b) may insure the risks of:

3740 (i) an affiliated company of an industrial insured; or  
3741 (ii) a controlled unaffiliated business of:

3742 (A) an industrial insured; or  
3743 (B) an affiliated company of an industrial insured.

3744 (17) "Industrial insured group" means:

3745 (a) a group of industrial insureds that collectively:

3746 (i) own, control, or hold with power to vote all of the outstanding voting securities of  
3747 an industrial insured captive insurance company incorporated or organized as a limited liability  
3748 company as a stock insurer; or  
3749 (ii) have complete voting control over an industrial insured captive insurance company  
3750 incorporated or organized as a limited liability company as a mutual insurer;

3751 (b) a group that is:

3752 (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 3901  
3753 et seq., as amended, as a corporation or other limited liability association; and

3754 (ii) taxable under this title as a:

3755 (A) stock corporation; or

3756 (B) mutual insurer; or

3757 (c) a group that has complete voting control over an industrial captive insurance  
3758 company formed as a limited liability company.

3759 (18) "Member organization" means a person that belongs to an association.

3760 (19) "Parent" means a person that directly or indirectly owns, controls, or holds with  
3761 power to vote more than 50% of:

3762 (a) the outstanding voting securities of a pure captive insurance company; or

3763 (b) the pure captive insurance company, if the pure captive insurance company is  
3764 formed as a limited liability company.

3765 (20) "Participant" means an entity that is insured by a sponsored captive insurance  
3766 company:

3767 (a) if the losses of the participant are limited through a participant contract to the assets  
3768 of a protected cell; and

3769 (b)(i) the entity is permitted to be a participant under Section 31A-37-403; or

3770 (ii) the entity is an affiliate of an entity permitted to be a participant under Section  
3771 31A-37-403.

3772 (21) "Participant contract" means a contract by which a sponsored captive insurance  
3773 company:

3774 (a) insures the risks of a participant; and

3775 (b) limits the losses of the participant to the assets of a protected cell.

3776 (22) "Protected cell" means a separate account established and maintained by a  
3777 sponsored captive insurance company for one participant.

3778 (23) "Pure captive insurance company" means a business entity that insures risks of a  
3779 parent or affiliate of the business entity.

3780 (24) "Special purpose financial captive insurance company" is as defined in Section  
3781 31A-37a-102.

3782 (25) "Sponsor" means an entity that:

- 3783 (a) meets the requirements of Section 31A-37-402; and  
3784 (b) is approved by the commissioner to:
- 3785 (i) provide all or part of the capital and surplus required by applicable law in an amount  
3786 of not less than [~~\$350,000~~] \$250,000, which amount the commissioner may increase by order if  
3787 the commissioner considers it necessary; and
- 3788 (ii) organize and operate a sponsored captive insurance company.
- 3789 (26) "Sponsored captive insurance company" means a captive insurance company:
- 3790 (a) in which the minimum capital and surplus required by applicable law is provided by  
3791 one or more sponsors;
- 3792 (b) that is formed or holding a certificate of authority under this chapter;
- 3793 (c) that insures the risks of a separate participant through the contract; and
- 3794 (d) that segregates each participant's liability through one or more protected cells.
- 3795 (27) "Treasury rates" means the United States Treasury strip asked yield as published  
3796 in the Wall Street Journal as of a balance sheet date.
- 3797 Section 36. Section **31A-37-103** is amended to read:
- 3798 **31A-37-103. Chapter exclusivity.**
- 3799 (1) Except as provided in Subsections (2) and (3) or otherwise provided in this chapter,  
3800 a provision of this title other than this chapter does not apply to a captive insurance company.
- 3801 (2) To the extent that a provision of the following does not contradict this chapter, the  
3802 provision applies to a captive insurance company that receives a certificate of authority under  
3803 this chapter:
- 3804 (a) Chapter 2, Administration of the Insurance Laws;
- 3805 (b) Chapter 4, Insurers in General;
- 3806 (c) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 3807 (d) Chapter 14, Foreign Insurers;
- 3808 (e) Chapter 16, Insurance Holding Companies;
- 3809 (f) Chapter 17, Determination of Financial Condition;
- 3810 (g) Chapter 18, Investments;
- 3811 (h) Chapter 19a, Utah Rate Regulation Act;
- 3812 (i) Chapter 27, Delinquency Administrative Action Provisions; and
- 3813 (j) Chapter 27a, Insurer Receivership Act.

3814 (3) In addition to this chapter, and subject to Section 31A-37a-103:

3815 (a) Chapter 37a, Special Purpose Financial Captive Insurance Company Act, applies to  
3816 a special purpose financial captive insurance company; and

3817 (b) for purposes of a special purpose financial captive insurance company, a reference  
3818 in this chapter to "this chapter" includes a reference to Chapter 37a, Special Purpose Financial  
3819 Captive Insurance Company Act.

3820 (4) In addition to this chapter, an industrial group captive insurance company formed  
3821 as a risk retention group captive is subject to Chapter 15, Part 2, Risk Retention Groups Act, to  
3822 the extent that this chapter is silent regarding regulation of risk retention groups conducting  
3823 business in the state.

3824 Section 37. Section **31A-37-204** is amended to read:

3825 **31A-37-204. Paid-in capital -- Other capital.**

3826 (1) (a) The commissioner may not issue a certificate of authority to a company  
3827 described in Subsection (1)(c) unless the company possesses and thereafter maintains  
3828 unimpaired paid-in capital and unimpaired paid-in surplus of:

3829 (i) in the case of a pure captive insurance company, not less than \$250,000;

3830 (ii) in the case of an association captive insurance company incorporated as a stock  
3831 insurer, not less than \$750,000;

3832 (iii) in the case of an industrial insured captive insurance company incorporated as a  
3833 stock insurer, not less than \$700,000;

3834 (iv) in the case of a sponsored captive insurance company, not less than \$1,000,000, of  
3835 which a minimum of [~~\$350,000~~] \$250,000 is provided by the sponsor; or

3836 (v) in the case of a special purpose captive insurance company, an amount determined  
3837 by the commissioner after giving due consideration to the company's business plan, feasibility  
3838 study, and pro-formas, including the nature of the risks to be insured.

3839 (b) The paid-in capital and surplus required under this Subsection (1) may be in the  
3840 form of:

3841 (i) (A) cash; or

3842 (B) cash equivalent; [or]

3843 (ii) an irrevocable letter of credit:

3844 (A) issued by:

- 3845 (I) a bank chartered by this state; or  
3846 (II) a member bank of the Federal Reserve System; and  
3847 (B) approved by the commissioner[-]; or  
3848 (iii) marketable securities as determined by Subsections 31A-18-105(1) and (6).  
3849 (c) This Subsection (1) applies to:  
3850 (i) a pure captive insurance company;  
3851 (ii) a sponsored captive insurance company;  
3852 (iii) a special purpose captive insurance company;  
3853 (iv) an association captive insurance company incorporated as a stock insurer; or  
3854 (v) an industrial insured captive insurance company incorporated as a stock insurer.  
3855 (2) (a) The commissioner may, under Section 31A-37-106, prescribe additional capital  
3856 based on the type, volume, and nature of insurance business transacted.  
3857 (b) The capital prescribed by the commissioner under this Subsection (2) may be in the  
3858 form of:  
3859 (i) cash; [or]  
3860 (ii) an irrevocable letter of credit issued by:  
3861 (A) a bank chartered by this state; or  
3862 (B) a member bank of the Federal Reserve System[-]; or  
3863 (iii) marketable securities as determined by Subsections 31A-18-105(1) and (6).  
3864 (3) (a) Except as provided in Subsection (3)(c), a branch captive insurance company, as  
3865 security for the payment of liabilities attributable to branch operations, shall, through its branch  
3866 operations, establish and maintain a trust fund:  
3867 (i) funded by an irrevocable letter of credit or other acceptable asset; and  
3868 (ii) in the United States for the benefit of:  
3869 (A) United States policyholders; and  
3870 (B) United States ceding insurers under:  
3871 (I) insurance policies issued; or  
3872 (II) reinsurance contracts issued or assumed.  
3873 (b) The amount of the security required under this Subsection (3) shall be no less than:  
3874 (i) the capital and surplus required by this chapter; and  
3875 (ii) the reserves on the insurance policies or reinsurance contracts, including:

3876 (A) reserves for losses;  
3877 (B) allocated loss adjustment expenses;  
3878 (C) incurred but not reported losses; and  
3879 (D) unearned premiums with regard to business written through branch operations.

3880 (c) Notwithstanding the other provisions of this Subsection (3), the commissioner may  
3881 permit a branch captive insurance company that is required to post security for loss reserves on  
3882 branch business by its reinsurer to reduce the funds in the trust account required by this section  
3883 by the same amount as the security posted if the security remains posted with the reinsurer.

3884 (4) (a) A captive insurance company may not pay the following without the prior  
3885 approval of the commissioner:

3886 (i) a dividend out of capital or surplus in excess of the limits under Section  
3887 16-10a-640; or  
3888 (ii) a distribution with respect to capital or surplus in excess of the limits under Section  
3889 16-10a-640.

3890 (b) The commissioner shall condition approval of an ongoing plan for the payment of  
3891 dividends or other distributions on the retention, at the time of each payment, of capital or  
3892 surplus in excess of:

3893 (i) amounts specified by the commissioner under Section 31A-37-106; or  
3894 (ii) determined in accordance with formulas approved by the commissioner under  
3895 Section 31A-37-106.

3896 (5) Notwithstanding Subsection (1), a captive insurance company organized as a  
3897 reciprocal insurer under this chapter may not be issued a certificate of authority unless the  
3898 captive insurance company possesses and maintains unimpaired paid-in surplus of \$1,000,000.

3899 (6) (a) The commissioner may prescribe additional unimpaired paid-in surplus based  
3900 upon the type, volume, and nature of the insurance business transacted.

3901 (b) The unimpaired paid-in surplus required under this Subsection (6) may be in the  
3902 form of an irrevocable letter of credit issued by:

3903 (i) a bank chartered by this state; or  
3904 (ii) a member bank of the Federal Reserve System.

3905 Section 38. Section **31A-37-303** is amended to read:  
3906 **31A-37-303. Reinsurance.**

3907 (1) A captive insurance company may provide reinsurance, as authorized in this title,  
3908 on risks ceded for the benefit of a parent, affiliate, or controlled unaffiliated business.

3909 (2) (a) A captive insurance company may take credit for reserves on risks or portions of  
3910 risks ceded to reinsurers if the captive insurance company complies with Section 31A-17-404,  
3911 31A-17-404.1, 31A-17-404.3, or 31A-17-404.4 or if the captive insurance company complies  
3912 with other requirements as the commissioner may establish by rule made in accordance with  
3913 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3914 (b) Unless the reinsurer is in compliance with Section 31A-17-404, 31A-17-404.1,  
3915 31A-17-404.3, or 31A-17-404.4 or a rule adopted under Subsection (2)(a), a captive insurance  
3916 company may not take credit for:

3917 (i) reserves on risks ceded to a reinsurer; or

3918 (ii) portions of risks ceded to a reinsurer.

3919 Section 39. Section **31A-37-501** is amended to read:

3920 **31A-37-501. Reports to commissioner.**

3921 (1) A captive insurance company is not required to make a report except those  
3922 provided in this chapter.

3923 (2) (a) Before March 1 of each year, a captive insurance company shall submit to the  
3924 commissioner a report of the financial condition of the captive insurance company, verified by  
3925 oath of [~~two~~] one of the executive officers of the captive insurance company.

3926 (b) Except as provided in Section 31A-37-204, a captive insurance company shall  
3927 report:

3928 (i) using generally accepted accounting principles, except to the extent that the  
3929 commissioner requires, approves, or accepts the use of a statutory accounting principle;

3930 (ii) using a useful or necessary modification or adaptation to an accounting principle  
3931 that is required, approved, or accepted by the commissioner for the type of insurance and kind  
3932 of insurer to be reported upon; and

3933 (iii) supplemental or additional information required by the commissioner.

3934 (c) Except as otherwise provided:

3935 (i) a licensed captive insurance company shall file the report required by Section  
3936 31A-4-113; and

3937 (ii) an industrial insured group shall comply with Section 31A-4-113.5.

3938 (3) (a) A pure captive insurance company may make written application to file the  
3939 required report on a fiscal year end that is consistent with the fiscal year of the parent company  
3940 of the pure captive insurance company.

3941 (b) If the commissioner grants an alternative reporting date for a pure captive insurance  
3942 company requested under Subsection (3)(a), the annual report is due 60 days after the fiscal  
3943 year end.

3944 (4) (a) Sixty days after the fiscal year end, a branch captive insurance company shall  
3945 file with the commissioner a copy of the reports and statements required to be filed under the  
3946 laws of the jurisdiction in which the alien captive insurance company is formed, verified by  
3947 oath by two of the alien captive insurance company's executive officers.

3948 (b) If the commissioner is satisfied that the annual report filed by the alien captive  
3949 insurance company in the jurisdiction in which the alien captive insurance company is formed  
3950 provides adequate information concerning the financial condition of the alien captive insurance  
3951 company, the commissioner may waive the requirement for completion of the annual statement  
3952 required for a captive insurance company under this section with respect to business written in  
3953 the alien or foreign jurisdiction.

3954 (c) A waiver by the commissioner under Subsection (4)(b):

3955 (i) shall be in writing; and

3956 (ii) is subject to public inspection.

3957 (5) Before March 1 of each year, a sponsored cell captive insurance company shall  
3958 submit to the commissioner a consolidated report of the financial condition of each individual  
3959 protected cell, including a financial statement for each protected cell.

3960 Section 40. Section **31A-37-502** is amended to read:

3961 **31A-37-502. Examination.**

3962 (1) (a) As provided in this section, the commissioner, or a person appointed by the  
3963 commissioner, shall examine each captive insurance company in each five-year period.

3964 (b) The five-year period described in Subsection (1)(a) shall be determined on the basis  
3965 of five full annual accounting periods of operation.

3966 (c) The examination is to be made as of:

3967 (i) December 31 of the full [~~three-year~~] five-year period; or

3968 (ii) the last day of the month of an annual accounting period authorized for a captive

3969 insurance company under this section.

3970 (d) In addition to an examination required under this Subsection (1), the commissioner,  
3971 or a person appointed by the commissioner may examine a captive insurance company  
3972 whenever the commissioner determines it to be prudent.

3973 (2) During an examination under this section the commissioner, or a person appointed  
3974 by the commissioner, shall thoroughly inspect and examine the affairs of the captive insurance  
3975 company to ascertain:

3976 (a) the financial condition of the captive insurance company;

3977 (b) the ability of the captive insurance company to fulfill the obligations of the captive  
3978 insurance company; and

3979 (c) whether the captive insurance company has complied with this chapter.

3980 (3) The commissioner may accept a comprehensive annual independent audit in lieu of  
3981 an examination:

3982 (a) of a scope satisfactory to the commissioner; and

3983 (b) performed by an independent auditor approved by the commissioner.

3984 (4) A captive insurance company that is inspected and examined under this section  
3985 shall pay, as provided in Subsection 31A-37-202(6)(b), the expenses and charges of an  
3986 inspection and examination.

3987 Section 41. Section **31A-40-208** is amended to read:

3988 **31A-40-208. Benefit plan.**

3989 (1) A client and a professional employer organization licensed under this chapter shall  
3990 each be considered an employer for purposes of sponsoring a retirement or welfare benefit plan  
3991 for a covered employee.

3992 (2) (a) A fully insured welfare benefit plan offered to a covered employee of a single  
3993 professional employer organization licensed under this chapter~~[(a)]~~ is to be treated as a single  
3994 employer welfare benefit plan for purposes of this title and rules made under this title~~[(a)]~~.

3995 ~~[(b) may not be considered an employer welfare fund or plan, as described in Section~~  
3996 ~~31A-13-101; and]~~

3997 ~~[(c)]~~ (b) The single professional employer organization that sponsors the fully insured  
3998 welfare plan is exempt from the registration requirements under this title for:

3999 (i) an insurance provider; or

4000 (ii) an employer welfare fund or plan.

4001 (3) For purposes of Chapter 30, Individual, Small Employer, and Group Health  
4002 Insurance Act:

4003 (a) a professional employer organization licensed under this chapter is considered the  
4004 employer of a covered employee; and

4005 (b) all covered employees of one or more clients participating in a health benefit plan  
4006 sponsored by a single professional employer organization licensed under this chapter are  
4007 considered employees of that professional employer organization.

4008 (4) A professional employer organization licensed under this chapter may offer to a  
4009 covered employee a health benefit plan that is not fully insured by an authorized insurer, only  
4010 if:

4011 (a) the professional employer organization has operated as a professional employer  
4012 organization for at least one year before the day on which the professional employer  
4013 organization offers the health benefit plan; and

4014 (b) the health benefit plan:

4015 (i) is administered by a third-party administrator licensed to do business in this state;  
4016 (ii) holds all assets of the health benefit plan, including participant contributions, in a  
4017 trust account;

4018 (iii) has and maintains reserves that are sound for the health benefit plan as determined  
4019 by an actuary who:

4020 (A) uses generally accepted actuarial standards of practice; and  
4021 (B) is an independent qualified actuary, including not being an employee or covered  
4022 employee of the professional employer organization;

4023 (iv) provides written notice to a covered employee participating in the health benefit  
4024 plan that the health benefit plan is self-insured or is not fully insured;

4025 (v) consents to an audit:

4026 (A) on a random basis; or  
4027 (B) upon a finding of a reasonable need by the commissioner; and

4028 (vi) provides for continuation of coverage in compliance with Section 31A-22-722.

4029 (5) The cost of an audit described in Subsection (4)(b)(v) shall be paid by the  
4030 sponsoring professional employer organization.

4031 (6) A plan of a professional employer organization described in Subsection (4) that is  
4032 not fully insured:

4033 (a) is subject to the requirements of this section; and

4034 (b) is not subject to another licensure or approval requirement of this title.

4035 Section 42. Section **31A-41-202** is amended to read:

4036 **31A-41-202. Assessments.**

4037 (1) [~~Beginning January 1, 2009, an~~] An agency title insurance producer licensed under  
4038 this title shall pay an annual assessment determined by the commission by rule made in  
4039 accordance with Section 31A-2-404, except that the annual assessment:

4040 (a) may not exceed \$1,000; and

4041 (b) shall be determined on the basis of title insurance premium volume.

4042 (2) [~~Beginning January 1, 2009, an~~] An individual who applies for a license or renewal  
4043 of a license as an individual title insurance producer, shall pay in addition to any other fee  
4044 required by this title, an assessment not to exceed \$20, as determined by the commission by  
4045 rule made in accordance with Section 31A-2-404, except that if the individual holds more than  
4046 one license, the total of all assessments under this Subsection (2) may not exceed \$20 in a  
4047 fiscal year.

4048 (3) (a) To be licensed as an agency title insurance producer [~~on or after July 1, 2008~~], a  
4049 person shall pay to the department an assessment of \$1,000 before the day on which the person  
4050 is licensed as a title insurance agency.

4051 (b) (i) [~~By no later than July 15, 2008, the~~] The department shall assess on [~~an~~] a  
4052 licensed agency title insurance producer [~~licensed as of June 30, 2008,~~] an amount equal to the  
4053 greater of:

4054 (A) \$1,000; or

4055 (B) subject to Subsection (3)(b)(ii), 2% of the balance [~~as of December 31, 2007,~~] in  
4056 the agency title insurance producer's reserve account described in Subsection 31A-23a-204(3).

4057 (ii) The department may assess on an agency title insurance producer an amount less  
4058 than 2% of the balance described in Subsection (3)(b)(i)(B) if:

4059 (A) before issuing the assessments under this Subsection (3)(b) the department  
4060 determines that the total of all assessments under Subsection (3)(b)(i) will exceed \$250,000;

4061 (B) the amount assessed on the agency title insurance producer is not less than \$1,000;

4062 and

4063 (C) the department reduces the assessment in a proportionate amount for agency title  
4064 insurance producers assessed on the basis of the 2% of the balance described in Subsection  
4065 (3)(b)(i)(B).

4066 (iii) An agency title insurance producer assessed under this Subsection (3)(b) shall pay  
4067 the assessment by no later than August 1[,2008].

4068 (4) The department may not assess a title insurance licensee an assessment for  
4069 purposes of the fund if that assessment is not expressly provided for in this section.

4070 Section 43. Section **31A-41-301** is amended to read:

4071 **31A-41-301. Procedure for making a claim against the fund.**

4072 [~~(1)(a) To bring a claim against the fund a person shall notify the department within 30~~  
4073 ~~business days of the day on which the person files an action against a title insurance licensee~~  
4074 ~~alleging the following related to a title insurance transaction:]~~

4075 [~~(i) fraud;~~]

4076 [~~(ii) misrepresentation; or~~]

4077 [~~(iii) deceit.]~~

4078 [~~(b) The notification required by Subsection (1)(a) shall be:]~~

4079 [~~(i) in writing; and~~]

4080 [~~(ii) signed by the person who provides the notice.]~~

4081 [~~(c) Within 30 days of the day on which the department receives a notice under~~  
4082 ~~Subsection (1)(a), the department may intervene in the action described in Subsection (1)(a).]~~

4083 [~~(2)(a) Subject to the other provisions in this section, a person who provides the notice~~  
4084 ~~required under Subsection (1) may maintain a claim against the fund if:]~~

4085 [~~(i) in an action described in Subsection (1), the person obtains a final judgment in a~~  
4086 ~~court of competent jurisdiction in this state against a title insurance licensee;]~~

4087 [~~(ii) all proceedings including appeals related to the final judgment described in~~  
4088 ~~Subsection (2)(a)(i) are at an end; and]~~

4089 [~~(iii) the person files a verified petition in the court where the judgment is entered for~~  
4090 ~~an order directing payment from the fund for the uncollected actual damages included in the~~  
4091 ~~judgment and unpaid.]~~

4092 [~~(b) A court may not direct the payment from the fund of:]~~

4093 ~~[(i) punitive damages;]~~  
4094 ~~[(ii) attorney fees;]~~  
4095 ~~[(iii) interest; or]~~  
4096 ~~[(iv) court costs.]~~  
4097 ~~[(c) Regardless of the number of claimants or parcels of real estate involved in a single~~  
4098 ~~real estate transaction, the liability of the fund may not exceed:]~~  
4099 ~~[(i) \$15,000 for a single real estate transaction; or]~~  
4100 ~~[(ii) \$50,000 for all transactions of a title insurance license.]~~  
4101 ~~[(d) A person shall:]~~  
4102 ~~[(i) serve the verified petition required by Subsection (2)(a) on the department; and]~~  
4103 ~~[(ii) file an affidavit of service with the court.]~~  
4104 ~~[(3) (a) A court shall conduct a hearing on a petition filed with the court within 30 days~~  
4105 ~~after the day on which the department is served:]~~  
4106 ~~[(b) The person who files the petition may recover from the fund only if the person~~  
4107 ~~shows all of the following:]~~  
4108 (1) To recover from the fund, a person shall:  
4109 (a) obtain a final judgment against a title insurance licensee establishing that fraud,  
4110 misrepresentation, or deceit by the licensee in a real estate transaction proximately caused  
4111 economic harm to the person; and  
4112 (b) apply to the department to receive compensation for the economic harm from the  
4113 fund.  
4114 (2) An application under Subsection (1)(b) shall establish all of the following:  
4115 ~~[(i)]~~ (a) the [person] applicant is not a spouse of the judgment debtor or the personal  
4116 representative of the spouse;  
4117 ~~[(ii) the person complied with this chapter;]~~  
4118 ~~[(iii)]~~ (b) the [person] applicant has obtained a final judgment in accordance with [this  
4119 section indicating the amount of the judgment awarded] Subsections (1)(a) and (3);  
4120 ~~[(iv)]~~ (c) [the] an amount is still [owing] owed on the judgment at the date of the  
4121 [petition] application;  
4122 ~~[(v)]~~ (d) the [person] applicant has had a writ of execution issued under the judgment,  
4123 and the officer executing the writ has returned showing that:

4124 ~~[(A)]~~ (i) no property subject to execution in satisfaction of the judgment could be  
4125 found; or

4126 ~~[(B)]~~ (ii) the amount realized upon the execution levied against the property of the  
4127 judgment debtor is insufficient to satisfy the judgment;

4128 ~~[(vi)]~~ (e) the ~~[person]~~ applicant has made reasonable searches and inquiries to ascertain  
4129 whether the judgment debtor has any interest in property, real or personal, that may satisfy the  
4130 judgment; and

4131 ~~[(vii)]~~ (f) the ~~[person]~~ applicant has exercised reasonable diligence to secure payment  
4132 of the judgment from the assets of the judgment debtor.

4133 ~~[(4) If the person described in Subsection (3) satisfies the court that it is not practicable  
4134 for the person to comply with one or more of the requirements in Subsections (3)(b)(v) through  
4135 (vii), the court may waive those requirements.]~~

4136 ~~[(5) (a) A judgment that is the basis for a claim against the fund may not have been  
4137 discharged in bankruptcy.]~~

4138 ~~[(b) If a bankruptcy proceeding is still open or is commenced during the pendency of  
4139 the claim, the person bringing a claim against the fund shall obtain an order from the  
4140 bankruptcy court declaring the judgement and debt to be nondischargeable.]~~

4141 (3) (a) A final judgment under Subsection (1)(a) does not include a default judgment  
4142 entered against a title insurance licensee. If grounds exist for a default judgment against a title  
4143 insurance licensee, the requirement of a final judgment may be satisfied by complying with  
4144 Section 31A-41-302.

4145 (b) A final judgment under Subsection (1)(a) does not include a judgment that is  
4146 discharged in bankruptcy. If a bankruptcy proceeding is open or is commenced during the  
4147 pendency of an application under Subsection (1)(b) before the department or the court, the  
4148 applicant shall obtain an order from the bankruptcy court declaring the judgment and debt to be  
4149 non-dischargeable.

4150 (4) The department may hold a hearing on the application filed pursuant to Subsection  
4151 (2). The hearing shall be an informal adjudicative proceeding under Title 63G, Chapter 4,  
4152 Administrative Procedures Act, with rights of appeal as provided in Title 63G, Chapter 4,  
4153 Administrative Procedures Act.

4154 Section 44. Section **31A-41-302** is repealed and reenacted to read:

4155           **31A-41-302.** Department may defend action in which title insurance licensee does  
4156 not appear or defend.

4157           (1) In a lawsuit alleging that fraud, misrepresentation, or deceit by a title insurance  
4158 licensee in a real estate transaction proximately caused economic harm, if grounds arise for the  
4159 entry of a default judgment against the title insurance licensee, the plaintiff may petition the  
4160 court to join the department as a defendant in the lawsuit.

4161           (2) After being served, the department may appear, conduct discovery, and otherwise  
4162 defend against any claim asserted against the title insurance licensee for which the fund may be  
4163 liable under this part. A judgment under this Subsection (2) may not be issued against the  
4164 department.

4165           Section 45. Section **31A-41-303** is amended to read:

4166           **31A-41-303. Determination and amount of fund liability.**

4167           (1) Subject to the requirements of this part, if the [court] department determines that a  
4168 claim should be levied against the fund, the [court] department shall enter an order [directing  
4169 the department to pay from the fund] that the fund pay that portion of the petitioner's judgment  
4170 that is [payable] eligible for payment from the fund.

4171           (2) A payment from the fund may not compensate for punitive damages, attorney fees,  
4172 interest, or court costs.

4173           (3) Regardless of the number of claimants or parcels of real estate involved in a single  
4174 transaction, the liability of the fund may not exceed:

4175           (a) \$15,000 for a single real estate transaction; or

4176           (b) \$50,000 for all transactions of a title insurance licensee.

4177           Section 46. Section **63I-2-231** is amended to read:

4178           **63I-2-231. Repeal dates, Title 31A.**

4179           (1) Section 31A-22-315.5 is repealed July 1, ~~[2016]~~ 2021.

4180           (2) Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, is repealed July 1,  
4181 2016.

4182           Section 47. **Repealer.**

4183           This bill repeals:

4184           Section **31A-13-101, Scope.**

- 4185 Section **31A-13-102, Regulation in general.**
- 4186 Section **31A-13-103, Registration.**
- 4187 Section **31A-13-104, Commissioner to file information.**
- 4188 Section **31A-13-105, Reports to employers and employees.**
- 4189 Section **31A-13-106, Annual accounting by insurance companies, service plans,**
- 4190 **and corporate trustees and agents.**
- 4191 Section **31A-13-107, Commissioner's remedies.**
- 4192 Section **31A-13-108, Investments.**
- 4193 Section **31A-13-109, Political activities.**
- 4194 Section **31A-17-404.2, Credit allowed a foreign ceding insurer.**